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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 15-CR-00637 (KAM)
:
Plaintiff, :
: United States Courthouse
-against- : Brooklyn, New York
:
EVAN GREEBEL, :
: Monday, December 18, 2017
Defendant. : 9:00 a.m.
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT JUDGE
BEFORE A JURY

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Proceedings recorded by Stenographic machine shorthand,
transcript produced by Computer-Assisted Transcription.

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1 (In open court; outside the presence of the jury.)

2 THE COURT: All right. So everybody is here.

3 This is continuance of trial for Mr. Greebel.

4 We did reach out to the jurors last evening and we
5 expect everybody will be in except for juror in
6 Seat Number 9. I think what I will do is just have
7 Alternate 1 sit where she is so we are not shuffling around.
8 It might be better if we are spread out a little bit because
9 there is a lot of coughing going on, unless the parties have
10 an objection to that.

11 But just to confirm, in the parties' joint letters
12 yesterday, they agreed that Juror Number 9 should be excused
13 and we will seat Alternate Number 1 in her stead. And
14 hopefully we will not loose anybody else.

15 I am also going to propose to the jurors that we
16 go through without lunch today, and instead that we adjourn
17 at 1:00, because I have to get up to a doctor's appointment.
18 And tomorrow they are predicting another two-hour
19 appointment starting at 7:45, so I probably will be in until
20 10:30. Unfortunately, I have pushed them back a couple of
21 times and I have to get them done.

22 (Pause in proceedings.)

23 THE COURT: All right. So we are also in receipt
24 of the parties' proposed instructions and the points of
25 difference, and I appreciate the parties' willingness to

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1 work together. We are going to try to post another version
2 of the instruction that we hope will incorporate both
3 parties' position, and we will put those up either later
4 today or first thing in the morning.

5 Does anybody have anything else they want to
6 raise?

7 (No audible response.)

8 THE COURT: No?

9 MR. KESSLER: No.

10 THE COURT: All right. Thank you. We will see if
11 everybody is here.

12 (Pause in proceedings.)

13 MR. KESSLER: We're continuing to confer.

14 THE COURT: Great.

15 All right. So when the jurors come in, as the
16 parties have agreed, I am going to announce that the juror
17 seated in Number 9 is excused and we will indicate that
18 Alternate 1 will be seated and leave it at that and we will
19 then move forward.

20 Is Dr. Rosenfeld here this morning?

21 MR. MASTRO: Yes, Your Honor.

22 THE COURT: Okay.

23 (Pause in proceedings.)

24 MR. MASTRO: Your Honor, would you like
25 Dr. Rosenfeld on the stand?

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1 THE COURT: That will be fine.

2 (Jury enters the courtroom.)

3 (Jury present.)

4 (Witness takes the stand.)

5 THE COURT: All jurors are present. Please have a
6 seat.

7 Members of the jury, I would like to advise you
8 that we are going to excuse Juror Number 9. You need not
9 speculate why, but that will mean the juror sitting in
10 Alternate 1 seat will be part of the Jury, and if you would
11 like to sit where you are, that is fine. I know that you
12 are a little bit packed in that jury box, and so you can
13 maintain your seat or you can move into the Number 9 seat.

14 And for the record, the juror sitting in
15 Seat Number 9 was previously designated as Juror Number 11.

16 I also want to advise the jury that we will
17 adjourn today at 1:00 o'clock. I would like to ask if it
18 would be all right to go through without lunch. We will
19 give you a couple of mid-morning breaks in order to
20 facilitate your comfort. And then tomorrow we won't be
21 starting until 10:30 in the morning so you need not rush in
22 to be here by 9:00. If you could please arrive no later
23 than 10:30, we would be very grateful and we will try to
24 push through as much as we can.

25 So with that, I will ask Mr. Mastro if he is ready

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1 to resume the direct examination of Dr. Rosenfeld.

2 MR. MASTRO: Yes, Your Honor. Thank you very
3 much, Your Honor.

4 **STEVEN ROSENFELD,**

5 called as a witness, having been previously duly
6 sworn, continued examined and testified as follows:

7 DIRECT EXAMINATION (CONTINUED)

8 BY MR. MASTRO:

9 Q Welcome back, Dr. Rosenfeld.

10 A Thank you.

11 Q Doctor, you testified last week about your arbitration
12 proceeding against Retrophin for breach of contract. Do you
13 remember that testimony, sir?

14 A I do, yes.

15 Q Over the six days of hearings in your arbitration case
16 against Retrophin, how many of those days were you on the
17 witness stand being questioned by your own counsel and
18 Retrophin's counsel?

19 A Approximately six days.

20 Q Almost every one of those days you were on examination;
21 is that correct, sir?

22 A Well, let me expand on that.

23 There were four attorneys there.

24 MR. PITLUCK: Objection, Your Honor.

25 THE COURT: Sustained.

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1 BY MR. MASTRO:

2 Q Sir, most of those days you were subject to examination
3 during the arbitration, correct?

4 A That's correct.

5 Q At the end of the arbitration, when the arbitrator
6 ruled in your favor, did Retrophin appeal that decision?

7 MR. PITLUCK: Objection, Your Honor.

8 THE COURT: Sustained.

9 Q Sir, is that -- did Retrophin comply with the
10 arbitrator's decision?

11 A Immediately.

12 THE COURT: You can push the microphone away from
13 you. You don't need to be right on top of it.

14 THE WITNESS: Okay.

15 THE COURT: Okay. Thank you.

16 THE WITNESS: Okay.

17 Q Dr. Rosenfeld, I would like to turn your attention to
18 Defendant's Exhibit 203-4.

19 MR. MASTRO: Mr. Carter, can you move it over?

20 Thank you, sir, and bring up the text.

21 Thank you.

22 BY MR. MASTRO:

23 Q This is a March 14, 2013 e-mail from Martin Shkreli to
24 you and Ron Tilles copying Evan Greebel. Do you recall
25 being asked questions about that, sir?

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1 A I do.

2 Q And in particular being asked about the sentence,
3 quote, Ron Tilles informed me you are considering legal
4 action against our company.

5 Do you recall being asked about that?

6 A Yes.

7 Q And do you recall testifying on Page 9307 when you were
8 here last week that you understood our company to mean
9 Retrophin; do you recall that testimony, sir?

10 A I do.

11 Q Now, sir, did you have conversations with Ron Tilles of
12 Retrophin informing him of your consideration of bringing
13 legal action?

14 A Yes.

15 Q At or about that time, March, 2013?

16 A Yes.

17 Q And besides Retrophin, did you tell him -- was anyone
18 else you were also considering suing in addition to
19 Retrophin?

20 A MSMB Healthcare, Martin Shkreli.

21 Q Okay. You were considering all of them; is that right,
22 sir?

23 MR. PITLUCK: Objection to the leading,
24 Your Honor.

25 THE COURT: Sustained.

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1 MR. MASTRO: I'm sorry, Your Honor.

2 THE COURT: And please don't retread ground that
3 we've already covered last week.

4 Q Sir, you testified last week about not always
5 identifying yourself as being a consultant for Retrophin
6 when you were doing your consulting work between February,
7 2014 and December, 2014. Do you recall that, sir?

8 A I do.

9 Q What effect did you think it would have on potential
10 business contacts you were reaching out to as a consultant
11 to Retrophin to identify or not identify yourself as a
12 consultant to Retrophin?

13 MR. PITLUCK: Objection, Your Honor, to form and
14 asked and answered.

15 THE COURT: Sustained.

16 Q Sir, besides what you have already testified to, were
17 there any other reasons why you didn't always identify
18 yourself in your business contacts as a consultant to
19 Retrophin as contacting them on behalf of Retrophin?

20 MR. PITLUCK: Objection to the form, Your Honor.

21 THE COURT: I'll allow this.

22 MR. MASTRO: Thank you, Your Honor.

23 THE COURT: And then we are going to move on. I
24 do not want to retread what we have already covered.

25 MR. MASTRO: I do not want to, Your Honor.

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1 Please.

2 THE COURT: Well, you are, but I will give you
3 latitude here.

4 MR. MASTRO: Thank you, Your Honor.

5 THE COURT: Please do not argue with me.

6 MR. MASTRO: Certainly, Your Honor.

7 THE COURT: Thank you.

8 A I didn't reveal the name Retrophin because the
9 competitor is essentially in the same field, could go around
10 me and in effect go directly to Retrophin.

11 Q Sir, directing your attention to July of 2015, your
12 testimony about a meeting with two FBI agents in your
13 apartment. Do you recall that testimony, sir?

14 A I do.

15 Q Without telling us what they said to you or you said to
16 them, the subject of your consulting agreement with
17 Retrophin discussed at that meeting?

18 MR. PITLUCK: Objection, Your Honor, asked and
19 answered.

20 THE COURT: Sustained.

21 Q Was the subject of the consulting work you did for
22 Retrophin discussed at that meeting?

23 MR. PITLUCK: Same objection, Judge.

24 THE COURT: I will allow this and then I am
25 telling you, Mr. Mastro, I would like you to comply with my

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1 rulings.

2 MR. MASTRO: All right.

3 THE COURT: I will let him answer this, but we are
4 not going to reread what we have done already.

5 You may answer the question.

6 A Yes.

7 Q Directing your attention to September of 2015, did
8 there come a time when you had another meeting with
9 representatives of the Government?

10 A Yes.

11 Q Without telling us what they said to you or you said to
12 them, was the subject of your consulting agreement with
13 Retrophin addressed at that meeting?

14 A Yes.

15 Q Was the subject of your consulting work for Retrophin
16 addressed at that meeting?

17 A Definitively, yes.

18 Q Was the subject of your arbitration with Retrophin
19 discussed at that meeting?

20 A Yes.

21 Q How long did that meeting last?

22 A A few hours.

23 Q Who, in addition to yourself, was in attendance at that
24 meeting, if you can recall?

25 A Government officials, Security Exchange Commission

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1 officials, FBI officials, that's what I recall.

2 Q Did anyone else attend with you on your behalf?

3 A Yes.

4 Q Who was that, sir?

5 A My attorney Andrew St. Laurent.

6 Q Where was the meeting held?

7 A It was held at juxtapose to this building.

8 Q At the U.S. Attorneys' office?

9 A Yes.

10 Q Sir, are you appearing here today pursuant to a
11 *subpoena* issued by the defense?

12 A That is correct.

13 Q Do you know whether that *subpoena* required you to meet
14 voluntarily with anyone from the defense before you
15 testified here today?

16 THE COURT: Required him to meet voluntarily?
17 Could you rephrase the question.

18 MR. MASTRO: Certainly.

19 Q Sir, do you know whether that *subpoena* required you to
20 meet with anyone from the defense before you testified here
21 today?

22 A I am not sure, because I did not see it.

23 Q Did you agree to meet with representatives of the
24 defense before today?

25 A Yes.

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1 Q How many times did you meet with me and others from the
2 defense before today?

3 A Approximately three.

4 Q Sir, why did you do that?

5 MR. PITLUCK: Objection.

6 THE COURT: Sustained.

7 Q Dr. Rosenfeld, can you explain to this jury why you
8 were willing to meet voluntarily with the defense before you
9 testified here today?

10 MR. PITLUCK: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q Dr. Rosenfeld, after you had that meeting in September,
13 2015 for several hours at the U.S. Attorneys' office with
14 Government officials, when was the next time you heard from
15 anyone in the Government?

16 A I am not sure of the chronology, but I did hear from --

17 Q Sir, since that September, 2015 meeting, has anyone
18 from the Government asked you to meet with them again since
19 that September, 2015 meeting?

20 A No.

21 Q Sir, to your knowledge what, if anything, did Evan
22 Greebel do wrong in connection with your consulting
23 agreement with Retrophin?

24 MR. PITLUCK: Objection.

25 Q What, if anything, did Evan Greebel do wrong in

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1 connection with you consummating a settlement agreement and
2 release with Retrophin?

3 MR. PITLUCK: Objection, Your Honor.

4 THE COURT: Sustained.

5 Q Dr. Rosenfeld, do you consider yourself to have done
6 anything wrong by entering into a consulting agreement with
7 Retrophin?

8 A No.

9 MR. MASTRO: No further questions, Your Honor.

10 THE COURT: All right. Would you like to cross,
11 Mr. Pitluck?

12 MR. PITLUCK: I would, Your Honor.

13 Just give me a moment, Judge, please.

14 (Pause in proceedings.)

15 MR. PITLUCK: May I proceed, Judge?

16 THE COURT: Yes.

17 CROSS-EXAMINATION

18 BY MR. PITLUCK:

19 Q Good morning, Dr. Rosenfeld.

20 A Good morning.

21 Q My name is David Pitluck. I am an Assistant United
22 States Attorney here in the Eastern District of New York.
23 We have never met before, correct, sir?

24 A I am not sure.

25 Q Okay. But you did testify that you have met with

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1 defense counsel in this case, correct?

2 A Yes.

3 Q And you testified, I think, just a few minutes ago that
4 you have met with them approximately three times; is that
5 right, sir?

6 A That is correct.

7 Q When did you first speak to lawyers for the defendant?

8 A A number of weeks ago.

9 Q That was the first time you spoke to them was a number
10 of weeks ago; is that right?

11 A May have been a number of months ago. A little blurry
12 with respect to that.

13 Q What about anybody else connected to the defendant,
14 when was the first time you spoke to anybody connected to
15 the defendant?

16 MR. MASTRO: Objection, Your Honor, form.

17 THE COURT: Could you rephrase just to give --

18 Q When was the first time you spoke to anyone corrected
19 to the defendant?

20 MR. MASTRO: Objection to form.

21 THE COURT: I think if you could be more precise
22 in your wording of the question it would alleviate the
23 concerns.

24 MR. PITLUCK: Okay.

25 Q When did you speak to anybody that you believe had a

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1 connection to the defendant?

2 MR. MASTRO: Same objection, Your Honor.

3 THE COURT: Overruled.

4 A My guesstimate is a few months ago.

5 Q Isn't it true, sir, that you spoke to somebody
6 representing the defendant before your arbitration
7 proceeding?

8 A I am not sure.

9 Q What about your lawyers, do you know if they spoke to
10 somebody, the lawyers for the defendant before your
11 arbitration proceeding?

12 MR. MASTRO: Objection. Hearsay, Your Honor.

13 MR. PITLUCK: Asked for his knowledge, Judge.

14 THE COURT: Overruled.

15 A They may have but I am not sure.

16 Q Okay.

17 So you testified that there were approximately
18 three conversations you had with the defense counsel before
19 testifying, correct?

20 A That is correct.

21 Q When did those conversations take place?

22 A Within the last few months.

23 Q Do you speak to the defense counsel since you testified
24 here last week?

25 A Yes.

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1 Q For how long?

2 A Ten or fifteen minutes.

3 Q Was that a phone call or was it in person?

4 A That was in person.

5 Q All right. What about before your testimony last week,
6 how long before your testimony did you meet with defense
7 counsel?

8 A Would you repeat that question because when you say how
9 long, I am not sure what you mean.

10 Q Approximately how long before your testimony last week
11 did you meet with defense counsel?

12 A Approximately 15 minutes.

13 Q Okay. What about the first meeting that you had, how
14 long was that meeting?

15 A May have been about an hour.

16 Q And other than those three meetings, did you have any
17 telephone calls with defense counsel?

18 A No.

19 Q Now, who was present during these meetings with defense
20 counsel?

21 A My attorney.

22 Q Anybody else?

23 A There may have been another attorney, so two attorneys
24 on my side.

25 Q Okay. And what about on the defense side, who was

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1 there?

2 A Possibly the same two attorneys. It is a guesstimate,
3 two or -- there was two.

4 Q Two defense counsel attorneys?

5 A That is a guesstimate, yes.

6 Q That is a guesstimate.

7 You do not remember who it was?

8 A Sometimes it was Jason and other times it was Reed or
9 other times it was Randy.

10 Q Anybody else there besides the people you just
11 mentioned?

12 A To the best of my knowledge, no.

13 Q But you did have your lawyer there, correct?

14 A That is correct.

15 Q Okay. For all of the meetings you had with defense
16 counsel?

17 A Yes.

18 Q Which lawyers did you have present with you?

19 THE COURT: At what meetings?

20 MR. PITLUCK: At the meeting with defense counsel.

21 I am sorry, Judge.

22 A It was Andrew St. Laurent.

23 Q Now, were you paid by the defense in connection with
24 your meetings that you had with them prior to testimony?

25 A No.

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1 Q What about your attorneys' fees, were those paid by
2 anybody else?

3 A No.

4 Q You paid for those yourself?

5 A That is correct.

6 Q Now, were these the same attorneys that represented
7 you -- I am sorry. Were your attorneys that represented you
8 in these meetings with defense counsel, were those the same
9 attorneys that represented you in the arbitration
10 proceeding?

11 A No.

12 Q But you testified on direct about the arbitration case
13 you had against Retrophin, correct?

14 A Yes.

15 Q And you filed that arbitration -- you filed a demand in
16 that arbitration proceeding in April of 2015; is that right,
17 sir?

18 A Approximately, yes.

19 Q And the actual proceeding where you testified, that was
20 in September of 2016; is that right, sir?

21 A Yes.

22 Q And you just a little while ago testified -- or
23 testified here that your -- you testified in your
24 arbitration proceeding in September of 2016, correct?

25 A I believe so, yes.

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1 Q And you were under oath during that arbitration
2 proceeding?

3 A I was.

4 Q And you told the truth during that arbitration
5 proceeding?

6 A Yes.

7 Q And as part of the arbitration proceeding you produced
8 documents to Retrophin and the arbitrator; isn't that right,
9 sir?

10 A Yes.

11 Q And the documents that you produced were stamped with a
12 Rosenfeld Bates Stamp; isn't that right, sir?

13 A I do not understand.

14 Q The documents that you produced as part of the
15 arbitration proceeding were stamped to identify them.
16 You're familiar with that, aren't you, sir?

17 A Yes.

18 Q And your stamp, the documents that you produced, were
19 stamped with Rosenfeld, your last name; isn't that right,
20 sir?

21 A Yes.

22 Q Now, you testified last week about your background;
23 isn't that right, sir?

24 A Yes.

25 Q And you testified that you went to medical school,

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1 correct?

2 A That is correct.

3 Q And that was a medical school in the
4 Dominican Republic, wasn't it, sir?

5 A It was a combination of schools.

6 Q But you actually got your degree from a medical school
7 in the Dominican Republic; isn't that right, sir?

8 A That is right.

9 Q The medical school called CETEC, C-E-T-E-C; is that
10 right?

11 A That is correct.

12 Q And you graduated in what year, sir?

13 A '82.

14 Q And you know, don't you, Dr. Rosenfeld, that that
15 medical school was shut down two years later by Dominican
16 authorities, don't you?

17 MR. MASTRO: Objection, Your Honor.

18 THE COURT: Overruled.

19 A I do not know the time span when it was shut down, but
20 I know it was shut down after I graduated.

21 Q And you also testified on direct that during medical
22 school you did a rotation at a psychiatry clinic; is that
23 right, sir?

24 A That is correct.

25 Q And after you graduated you never got a license to

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1 practice medicine?

2 A That is correct.

3 Q And never actually intended to practice medicine, did
4 you, Dr. Rosenfeld?

5 A Correct.

6 Q Never had a residency at a hospital, right?

7 A That is correct.

8 Q Or an internship?

9 A That is correct.

10 Q So you've never actually treated a patient since the
11 early 1980s; is that right, sir?

12 A That is correct.

13 Q And you talked at length about your background, your
14 employment after you graduated from medical school in the
15 early 1980s; isn't that right, sir?

16 A Yes.

17 Q You testified about a job you had operating some
18 medical centers; is that right?

19 A That is correct.

20 Q And having founded a company that made glow-in-the-dark
21 necklaces; is that right?

22 A That is correct.

23 Q And then you testified that you moved on to
24 biotechnology investing; is that right?

25 A Yes.

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1 Q And I think you testified on direct at transcript
2 Page 9273 that you now do research in the medical field; is
3 that right, sir?

4 A That is correct.

5 Q And you've been doing that for quite awhile, haven't
6 you, Dr. Rosenfeld?

7 A Yes.

8 Q I think you testified on direct on the same page that
9 you have been involved in many different types of cancer
10 opportunities and research; is that right?

11 A Correct.

12 Q Can you just describe for the jury the cancer
13 opportunities and the research you have worked on?

14 A Well, they vary from offering drugs to different types
15 of systemic cancers.

16 Q So what lab did you work at, sir?

17 A I do not work in a lab. I do everything independently.

18 Q What experiments do you run?

19 A It really depends on the situation.

20 Q What cancer do you focus on researching?

21 A Again, it's a gamut of different cancers depending on
22 the opportunity.

23 Q And you have written journal articles about your
24 research, correct, sir?

25 A No.

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1 Q But you have given scientific research on your
2 presentations, right?

3 A No.

4 Q Isn't it true, Dr. Rosenfeld, that what you really do
5 is find drugs to invest in and try to make money off of
6 them?

7 A That is part of the equation.

8 Q Okay. You do not actually develop the drug, do you,
9 sir?

10 A I confer with my network and we all work together to
11 try to figure things out. So it's a -- it's a situation
12 where you wear many different hats, so I am not a publisher
13 of research. That is not my interest, or if I saw something
14 interesting, I do not think I would publish it because I
15 would again amalgamate everyone's thoughts and try to see if
16 we can push the drug and get it to a successful and final --

17 Q So what cancer --

18 A -- FDA approval.

19 Q I am sorry, I did not mean to cut you off.

20 What cancer drugs have you gotten FDA approval
21 for, sir?

22 A Some of them have -- it's a motley thought, but some of
23 them have been brought to the FDA. For example, I can the
24 think of one where we -- it was a company called Merlin, we
25 sold that off. And I think Cell Genesys bought it or

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1 Somatix bought it. I am not sure which company bought it.

2 But our goal is to look at early stage
3 opportunities, analyze them with a group of different people
4 who are skilled in what they do, and basically you learn
5 from every different opportunity and nobody's an expert in
6 any field. And I can tell you that a lot of these
7 opportunities are risky, and if I had to think fast, maybe
8 one out of a dozen that are done work out. Most of them do
9 not work out. It is a very hard to process so it is a lot
10 of legwork, teamwork and I enjoy it and that is why I am in
11 it.

12 Q Okay. So that is really consistent with your testimony
13 last week where you said you are a self-employed investor
14 with interest in the biotechnology field; is that right?

15 A Amongst other fields, yes.

16 Q Well, let's unpack that a little bit. You do not have
17 any formal financial training, do you?

18 A Well, I was in business when I was 18 years old dealing
19 with the Department of Defense.

20 Q You testified about that last week. Your father's
21 company, right, sir?

22 A I did not say the Department of Defense.

23 Q Okay. But you do not have an MBA, right, a Master's of
24 Business Administration, right?

25 A Well, the analogy I think of --

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1 Q It is a yes-or-no question, sir.

2 Do you have an MBA?

3 A No.

4 Q Never had a job on Wall Street?

5 A No.

6 Q Never worked in an investment bank?

7 A No.

8 Q Do not have any securities licenses, do you, sir?

9 A No.

10 Q Series 7?

11 A No.

12 Q Series 63?

13 A No.

14 Q Do you know what those are?

15 A I have friends who have those licenses.

16 Q So your investing experience in the biotechnology field
17 would you put Retrophin in that category, sir?

18 A As an orphan drug company, yes.

19 Q Your role in Retrophin, as you testified on direct, was
20 to invest \$95,000, correct?

21 MR. MASTRO: Objection to form, Your Honor.

22 THE COURT: Try to rephrase it, Mr. Pitluck, if
23 you could.

24 Q When you made your investment in Retrophin you invested
25 \$95,000 to purchase shares; is that right, sir?

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1 A I am not sure if it was 95 or \$100,000. I believe it
2 was 100,000.

3 Q Maybe I can show you something to refresh your
4 recollection, sir.

5 You wrote a check in connection with your
6 investment in Retrophin?

7 A Yes.

8 Q And did you sign a subscription agreement in connection
9 with your check for Retrophin; your investment in Retrophin?

10 A Yes.

11 Q I would like to show you just for identification
12 Government's Exhibit 117-10. I would just like you to take
13 a look at that and let me know when you are through.

14 THE COURT: That is exhibit --

15 MR. PITLUCK: Government's Exhibit 117-10.

16 THE COURT: 117-10. Thank you. I just was not
17 sure if it was 510 or 10. Thank you.

18 Q Okay. Did you have a chance to look at that,
19 Dr. Rosenfeld?

20 A Yes.

21 Q Is that the check from Park Avenue Discoveries?

22 A Yes.

23 Q Does that refresh your recollection how much you
24 invested in Retrophin initially?

25 A It does.

Rosenfeld - Cross - Pitluck

9840

1 Q And how much did you invest in Retrophin initially,
2 sir?

3 A I believe it was 100,000.

4 Q So this check is wrong?

5 A There was an additional check for \$5,000.

6 Q Okay.

7 A I believe.

8 Q You believe.

9 Okay. Now you testified on direct examination
10 about your investment in MSMB Healthcare. Do you remember
11 that, sir?

12 A Yes.

13 Q And you testified that you invested in MSMB Healthcare
14 based on a recommendation from your friend Ron Tilles. Do
15 you remember that?

16 A I do.

17 Q Isn't it true, sir, that the first contact that Ron
18 Tilles had with you about companies associated with Martin
19 Shkreli was actually with Retrophin, right?

20 A No.

21 Q No, it was not?

22 A No.

23 Q So in March of 2011 Ron Tilles did not send you a
24 presentation on Retrophin seeking your input?

25 A My first recollection of investing was in MSMB

Rosenfeld - Cross - Pitluck

9841

1 \$200,000.

2 Q Well, that was not my question, sir.

3 My question was what was the first opportunity
4 Ron Tilles brought to you that was connected to Martin
5 Shkreli?

6 MR. MASTRO: Objection, asked and answered,
7 Your Honor.

8 MR. PITLUCK: Your Honor, it was not.

9 THE COURT: No. Well, I would overrule the
10 objection. I do not believe it was asked and answered.

11 You may answer it.

12 Do you need it read back or do you remember the
13 question?

14 THE WITNESS: Okay. Read it back, please.

15 THE COURT: Could you do that, please, sir. Thank
16 you.

17 (Requested portion read back.)

18 A As far as I can recall, it was MSMB but that is what I
19 recall.

20 MR. PITLUCK: Your Honor --

21 Q Is there other documents that may refresh your
22 recollection that you received from Ron Tilles related to
23 Retrophin, maybe?

24 A Can you repeat the question, I am sorry.

25 MR. PITLUCK: You know what -- Your Honor, may I

Rosenfeld - Cross - Pitluck

9842

1 approach?

2 THE COURT: Yes.

3 Q I am showing you what has been marked for
4 identification as Government's Exhibit 117-1 and 117-2.

5 A Thank you very much.

6 Q Let me know when you have had a chance to look at
7 those, please.

8 MR. PITLUCK: And, Judge, that is Tab 1 and 2 in
9 your binder.

10 THE COURT: Thank you.

11 This is just identified not in evidence.

12 MR. PITLUCK: Just for identification.

13 THE COURT: Thank you.

14 (Pause in proceedings.)

15 BY MR. PITLUCK:

16 Q And, sir, I do not want to interpret you. I am just
17 asking very high level questions about this right now. I
18 know some of these are dense. If you want to continue
19 reading, I am happy to give you time.

20 A Just another one or two minutes.

21 Q Sure. Absolutely, sir. I do not want to rush you.

22 (Pause in proceedings.)

23 (Continued on next page.)

24

25

ROSENFELD - CROSS - PITLUCK

9843

1 BY MR. PITLUCK:

2 Q Have you had a chance to look at those now,
3 Dr. Rosenfeld?

4 A Yes, quickly.

5 Q Does that refresh your recollection that Mr. Tilles sent
6 you presentations and documents related to Retrophin in March
7 of 2015 and February of 2012?

8 A It does.

9 Q Prior to the time that you invested in MSMB Healthcare?

10 A Yes.

11 Q And you testified on direct that you, at this point in
12 time, had a business relationship with Mr. Tilles, correct?

13 A Yes.

14 Q You had known him for, I think you said, five to ten
15 years at this time, right?

16 A Approximately, yes.

17 Q And you were not just -- didn't just have a business
18 relationship, you were also friends with Mr. Tilles, right?

19 A Yes.

20 Q And you had done some transactions together, invested in
21 some transactions together, correct?

22 A That's correct.

23 Q One of them was a deal you did with MIT, correct,
24 tracking containers; is that right?

25 A It was a system being used to track, from what I recall,

ROSENFELD - CROSS - PITLUCK

9844

1 pharmaceuticals and many other things that were of high value,
2 and MIT gave it -- or claimed that it was one of their better
3 opportunities. It won an award, which I am not --

4 Q And you invested in that one at Mr. Tilles' suggestion,
5 correct?

6 A I did.

7 Q And you also invested in a business, solar power
8 business; is that right, sir?

9 A Yes. I am involved in green --

10 Q Just yes or no answer.

11 THE COURT: Yes or no, please.

12 THE WITNESS: Yes.

13 BY MR. PITLUCK:

14 Q And, yes or no, Dr. Rosenfeld, you also did -- you had
15 some art dealings with Mr. Tilles, right?

16 A That's correct.

17 Q You're still friends with Mr. Tilles, aren't you, sir?

18 A That's correct.

19 Q And Mr. Tilles was the one who brought you MSMB
20 Healthcare as a potential investment opportunity; is that
21 right?

22 A Yes.

23 Q And he introduced you to Martin Shkreli in connection
24 with that opportunity; is that right, sir?

25 A That's correct.

ROSENFELD - CROSS - PITLUCK

9845

1 Q And you invested \$200,000 in MSMB Healthcare on June 20,
2 2012; is that right, sir?

3 A That's correct.

4 Q And prior to that meeting, you met with Martin Shkreli,
5 right?

6 A Yes.

7 Q And prior to that meeting you had discussions with
8 Mr. Tilles about MSMB Healthcare, as an investment
9 opportunity, correct?

10 A Yes.

11 Q And Mr. Tilles gave you his views on MSMB Healthcare as
12 an investment opportunity, right?

13 A Yes.

14 Q Including returns he expected to get out of MSMB
15 Healthcare, right?

16 A Yes.

17 Q He told you, sir, that he thought Martin Shkreli was
18 going to get a 20 percent return on MSMB Healthcare; isn't
19 that right?

20 A Yes.

21 Q And in connection with your investment in MSMB Healthcare
22 you signed a subscription agreement, right, sir?

23 A Yes.

24 Q And as a biotechnology investor, you're familiar with
25 what a subscription agreement is, right, sir?

ROSENFELD - CROSS - PITLUCK

9846

1 A Yes.

2 Q You reviewed that agreement before you signed it?

3 A Yes.

4 Q And isn't it true, sir, that soon after you invested in
5 June of 2012, you learned that MSMB Healthcare was going to be
6 winding down; is that right?

7 A Your definition of soon?

8 Q Within a few months you learned of investing in MSMB
9 Healthcare, you learned it was going to be winding down,
10 right?

11 A I think it was close to four to five months,
12 approximately.

13 Q You invested in June of 2012, right?

14 A That's correct.

15 Q I would like to see if I can refresh your recollection.

16 MR. PITLUCK: Can I have 117-136, please.

17 Judge, can I approach?

18 THE COURT: Yes.

19 BY MR. PITLUCK:

20 Q Showing the witness what's been marked for identification
21 only as Government Exhibit 117-136.

22 A Thank you.

23 MR. PITLUCK: Your Honor, do you have a copy of
24 that?

25 THE COURT: Yes, I do. Thank you.

ROSENFELD - CROSS - PITLUCK

9847

1 Does Government Exhibit 117-36 refresh your
2 recollection?

3 THE WITNESS: Yes.

4 MR. PITLUCK: Thank you, Judge.

5 And just for the record, it's 117-136. Tab 136.

6 THE COURT: It's labeled as dash 36.

7 MR. PITLUCK: I hope not, Judge. There is a 36, but
8 I think it is a different document.

9 BY MR. PITLUCK:

10 Q Dr. Rosenfeld, you have one with 117-136 on the bottom,
11 don't you, sir?

12 A I do.

13 Q And does that refresh your recollection, sir, that on
14 September 10, 2012, you learned that MSMB Healthcare was going
15 to be winding down?

16 A Yes.

17 Q So less than three months after your -- you made your
18 investment, right?

19 A I think that's approximate.

20 Q Okay. And you learned that from Mr. Tilles, right?

21 A Yes.

22 Q And after you learned this, you -- that was when you
23 invested what you testified was \$100,000 into Retrophin
24 directly, correct?

25 A Between 95 and 100. I am just not actually sure if the

ROSENFELD - CROSS - PITLUCK

9848

1 other \$5,000 was allocated.

2 Q Okay. So either 95 or 100,000 dollars, whatever it was,
3 your investment in Retrophin was after you received this
4 e-mail telling you that Retrophin was winding down, correct?

5 MR. MASTRO: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 BY MR. PITLUCK:

9 Q And you always viewed that -- withdrawn.

10 You viewed that as a separate investment from your
11 MSMB Healthcare investment, correct, Dr. Rosenfeld?

12 A I did.

13 Q Isn't it also true, Dr. Rosenfeld, that you learned on --
14 in December of 2012, that your MSMB Healthcare investment was
15 going to be liquidated, correct?

16 A Yes.

17 Q And you were notified of that through an e-mail from MSMB
18 Healthcare, correct? To the best of your recollection?

19 A Yes.

20 Q And when you learned of that, sir, you wanted to redeem
21 your MSMB Healthcare investment in cash, right, sir?

22 A I did.

23 Q The \$200,000 you had invested and whatever -- in earnings
24 that had accrued on that investment, correct?

25 A Correct.

ROSENFELD - CROSS - PITLUCK

9849

1 Q And, yes or no, Dr. Rosenfeld, within a few days of
2 learning that MSMB Healthcare was going to be liquidated, you
3 started reaching out to Martin Shkreli to get your money back,
4 correct?

5 A That's correct.

6 Q And, in fact, between December 21 and December 28, 2012,
7 you reached out to Martin Shkreli at least four times, trying
8 to get in touch with him to get your money back; is that
9 right, sir?

10 A I'm not sure on the amount of time, but I definitely did
11 reach out to him.

12 Q More than once; is that right?

13 A Yes.

14 Q And is it safe to say, Dr. Rosenfeld, that Mr. Shkreli
15 wasn't really responsive to your requests in December of 2012?

16 A Correct.

17 Q Having a tough time getting a hold of him?

18 A Yes.

19 Q Despite these repeated contacts, Martin Shkreli was not
20 getting back to you on your request for money, correct?

21 A Yes.

22 Q And at the same time, in December of 2012, you were also
23 reaching out to your friend Ron Tilles about your MSMB
24 Healthcare investment, weren't you, sir?

25 A That's correct.

ROSENFELD - CROSS - PITLUCK

9850

1 Q Were you -- isn't it true you were contacting Mr. Tilles
2 repeatedly, trying to get information from him about your
3 investment; is that right?

4 A That's right.

5 Q And pushing Mr. Tilles to go to Martin Shkreli and figure
6 out when you were going to get your money back, right?

7 A Right.

8 Q And that continued through the new year into January
9 2013; isn't that right?

10 A Yes.

11 Q And it wasn't until early January of 2013 that Martin
12 Shkreli responded to you and basically told you, you couldn't
13 get your money out, right?

14 A Right.

15 Q And Mr. Shkreli told you to reach out to Ron Tilles for
16 further information, didn't he?

17 A He did.

18 Q And isn't it true that you asked Mr. Shkreli for your PPM
19 and your LPA; is that right?

20 A I believe so.

21 Q Can you explain to the jury what a PPM and a LPA are?

22 A PPM is an acronym for private placement memorandum.

23 Q What about LPA?

24 A I'm not familiar with that acronym.

25 Q But you asked Martin Shkreli for it anyway?

ROSENFELD - CROSS - PITLUCK

9851

1 A I believe I had some legal guidance.

2 Q I am not asking for legal guidance, sir, but I want to
3 make that clear. But you asked for those from Martin Shkreli,
4 and you asked for those two documents from Ron Tilles, right?

5 A I believe so.

6 Q And Mr. Shkreli's response to you that you couldn't get
7 your money out right away, that didn't stop you from trying to
8 get it back, did it?

9 A That's correct.

10 Q You were trying to get your \$200,000 plus profits back
11 even after -- in cash, even after Martin Shkreli told you you
12 couldn't, right?

13 A That's right.

14 Q Isn't it true, Dr. Rosenfeld, that at this point in time,
15 January 2013, you are starting to get pretty suspicious of
16 what's going on at MSMB Healthcare, aren't you?

17 A Yes.

18 Q An inability to get your money out is concerning, right,
19 sir?

20 A Yes.

21 Q And isn't it true that on January 14, 2013, you sent a
22 formal letter to Martin Shkreli demanding a return of your
23 money by January 31, 2013?

24 A Yes.

25 Q You sent it to Martin Shkreli and MSMB Capital, seeking

ROSENFELD - CROSS - PITLUCK

9852

1 your investment return in MSMB Healthcare; is that right?

2 A Yes.

3 Q And after you sent this letter to Martin Shkreli in the
4 middle of January 2013, you didn't get a response from Martin
5 Shkreli, did you?

6 A I am not sure of the dates on that. So when he did get
7 back to me. Sorry.

8 Q Isn't it true, Dr. Rosenfeld, that on January 19, 2013,
9 about five days after you sent that redemption letter, you
10 contacted Ron Tilles and said, you got to put me in touch with
11 Martin, or I am going to refer you to my lawyer; isn't that
12 right?

13 A Yes.

14 Q And that was a communication over text message, correct?

15 A I believe so.

16 Q Did you text fairly frequently with Mr. Tilles at this
17 time?

18 A Yes.

19 Q So this is in January of 2013, and you are indicating
20 that if Martin doesn't start responding to you, you are going
21 to bring in your lawyer, right?

22 A That's correct.

23 Q And you -- but despite that, you still had a lot of
24 trouble getting a hold of Martin Shkreli in January and
25 February of 2013; isn't that right, Dr. Rosenfeld?

ROSENFELD - CROSS - PITLUCK

9853

1 A Yes.

2 Q In fact, you scheduled two lunches with him to try to
3 meet with him about MSMB Healthcare; isn't that right?

4 A I'm not sure.

5 Q Do you remember testifying about that in your arbitration
6 proceedings, sir?

7 A About two lunches?

8 Q That you tried to schedule with Mr. Shkreli, and then he
9 then cancelled?

10 A I do.

11 Q And you remember that you tried to schedule two lunches
12 with Mr. Shkreli in January, February 2013, but he cancelled
13 them both?

14 A Yes, I think that sounds correct. I'm not definitive.

15 Q Okay. And those lunches that you tried to schedule would
16 have been about your investment in MSMB Healthcare; isn't that
17 right?

18 A Yes.

19 Q Trying to find out when you were going to get your money
20 back?

21 A Correct.

22 Q And after, best of your recollection, Mr. Shkreli
23 cancelled both of these lunches, your suspicions grew; didn't
24 they, sir?

25 A Yes.

ROSENFELD - CROSS - PITLUCK

9854

1 Q And now you're really worried about your MSMB Healthcare
2 investment, right, sir?

3 A Yes.

4 Q And you're also, at this time, not getting a clear answer
5 from Ron Tilles about where your money is, are you, sir?

6 A That's correct.

7 Q Sometimes Ron would tell you, we've got a check,
8 sometimes he would tell you, we don't, right?

9 A Yes.

10 Q But you're still chasing your money, right?

11 A For over a year, yes.

12 Q For over a year.

13 And isn't it true that in March of 2013, you learned
14 that your investment in MSMB Healthcare is going to be
15 delivered to you in shares of Retrophin, right?

16 A Right.

17 Q Without telling me what you said on this conversation,
18 you spoke to someone at Retrophin named Michael Smith about
19 how your investment was going to be redeemed; isn't that
20 right, sir?

21 A That I don't recall, Michael Smith.

22 Q Do you recall speaking to anyone at Retrophin about the
23 share certifications you were going to get in Retrophin stock?

24 A Yes.

25 Q And you don't remember who it was, though, sitting here

ROSENFELD - CROSS - PITLUCK

9855

1 today?

2 A Well, I spoke to Ron Tilles about it, I spoke to the CFO.

3 Q I'm talking in March 2013, sir. Yes or no, you don't
4 remember who you spoke to?

5 A I am not clear on it.

6 Q Okay. And you wanted to know, in this time, March 2013,
7 how many shares you were getting and what the strike price
8 was, right, sir?

9 A Yes.

10 Q Because that would tell you how much your shares in
11 Retrophin were worth, your investment in Retrophin was worth,
12 right?

13 A Yes.

14 Q And isn't it true that when you learned the number of
15 shares you were receiving and the strike price, you were
16 really disappointed in the number of Retrophin shares you had
17 received, correct?

18 A Yes.

19 Q And you thought it was less than you had deserved, right?

20 A Yes.

21 Q Less than your \$200,000 investment in MSMB Healthcare,
22 right?

23 A Yes.

24 Q And you also wanted to know if you had the same strike
25 price as Martin Shkreli, right?

ROSENFELD - CROSS - PITLUCK

9856

1 A Yes.

2 Q And, in fact, sir, didn't you learn when you figured out
3 how much shares of Retrophin you had, that you lost about
4 \$100,000 of your MSMB Healthcare investment?

5 A I'm not sure of that statement.

6 Q You're not sure that you lost money, or you're not sure
7 that you lost \$100,000?

8 A I'm not sure that I lost \$100,000.

9 Q But you knew, sir, that you were -- your investment in
10 MSMB had converted to Retrophin stock at a loss to you,
11 correct?

12 A I would have to do the math on that one, but I'm not
13 sure.

14 Q Do you remember testifying about this in your arbitration
15 proceeding, sir?

16 A I'm sorry, can you be more specific.

17 Q Do you remember testifying about how much money you
18 believed you lost when your MSMB Healthcare investment was
19 converted into Retrophin shares?

20 A I just knew that there was some inequities going on, and
21 I was just chasing my money, so. As far as the math was
22 concerned, I don't think I did the math on how much money I
23 lost. I hope that answers your question.

24 Q I want to see if I can refresh your recollection, sir.

25 MR. PITLUCK: May I approach, Judge.

ROSENFELD - CROSS - PITLUCK

9857

1 THE COURT: Yes.

2 BY MR. PITLUCK:

3 Q I'm going to hand you a binder, sir, that contains
4 your -- the transcript of your deposition in the arbitration,
5 and transcripts of your deposition.

6 A Thank you.

7 Q I am going to ask you to turn to page 812. Let me know
8 when you're there, please, sir. It is behind tab 2. Are you
9 there, sir?

10 A Yes.

11 Q You see at the bottom you were asked the question: Sir
12 you were, being told, in effect, that you lost money on your
13 MSMB Healthcare investment. You put into 200,000, you are
14 getting back less than 100,000, or you are getting back shares
15 worth less than 100,000?

16 MR. MASTRO: Objection, Your Honor. To refresh
17 recollection, he should refer him to read it and see if it
18 refreshes recollection.

19 MR. PITLUCK: Judge, this is done repeatedly over
20 the last --

21 THE COURT: Well, let's try to stay with the
22 protocols for refreshing recollection.

23 MR. PITLUCK: Sure, Judge.

24 THE COURT: All right. You can direct him to the
25 pages and lines and ask if this refreshes his recollection.

ROSENFELD - CROSS - PITLUCK

9858

1 MR. PITLUCK: Absolutely, Your Honor.

2 BY MR. PITLUCK:

3 Q You see the question, page 812, line 20, in your answer
4 at line 25? Just five lines.

5 A I do.

6 Q Does that refresh your recollection that at the time you
7 thought you were -- you had lost about \$100,000 in your MSMB
8 Healthcare investment?

9 A Yes.

10 Q And that's okay, Dr. Rosenfeld, you can put it aside now.
11 We will refer back to that.

12 A Thank you.

13 Q Thank you.

14 And you were upset by that conversion that resulted
15 in you losing \$100,000 in your investment, right?

16 A Yes.

17 Q And isn't it true that you immediately reached out to Ron
18 Tilles after you learned of this conversion?

19 A Yes.

20 Q And nobody ever asked you if you wanted to convert your
21 MSMB Healthcare stock into Retrophin, right?

22 A That's correct.

23 Q You wanted your cash, right?

24 A Yes.

25 Q And isn't it true that on March 13, 2013 you again told

ROSENFELD - CROSS - PITLUCK

9859

1 Ron Tilles that you were considering legal action against
2 Martin Shkreli, right?

3 A That's correct.

4 Q And that, in fact, you had already brought in a lawyer,
5 right?

6 A I was contemplating that, correct.

7 Q Your friend -- withdrawn.

8 Your lawyer Stuart Meissner, right?

9 A Yes. I was contemplating hiring him, yes.

10 Q And that was the day that you got the e-mail that you saw
11 on direct examination from Martin Shkreli, saying that he had
12 learned you told Ron Tilles you wanted to -- were engaging a
13 lawyer and that you should only speak to his lawyer from there
14 on out, right?

15 A That's correct.

16 Q And that was March 13, 2013, right, sir?

17 A Seems right.

18 Q And you don't have a recollection one way or the other,
19 do you, Dr. Rosenfeld, whether you contacted the defendant on
20 March 13, 2013?

21 A The defendant being?

22 Q Evan Greebel.

23 A I'm not sure.

24 Q You are not sure if you contacted Evan Greebel after
25 receiving an e-mail from Martin Shkreli that said you should

ROSENFELD - CROSS - PITLUCK

9860

1 contact Evan Greebel?

2 A Oh, then, yes, I am sure I did or my attorney did.

3 Q You are sure now that you did or your attorney did
4 contacted Evan Greebel on that day?

5 A Actually, I take that back. I'm not sure, but it would
6 be -- it would make sense to me that there was some
7 communications going on either by e-mail, telephone, or
8 communications between Ron Tilles and Greebel.

9 Q Between Ron Tilles and Greebel, that's what you think?

10 A I would think so.

11 Q You would think -- but you have no specific recollection
12 sitting here, one way or the other, whether you spoke to Evan
13 Greebel?

14 A I may have.

15 Q You may have? You just don't remember?

16 A Again, I'm not sure. I'm sorry.

17 Q But you are sure, correct, Dr. Rosenfeld, that you
18 continued to speak to Ron Tilles after receiving this e-mail
19 from Mr. Shkreli, right?

20 A That's correct.

21 Q And Ron Tilles at that point you believed worked at
22 Retrophin, right?

23 A Yes.

24 Q And based on your understanding, Ron Tilles worked at
25 Retrophin throughout the end of 2012 and beginning of 2013,

ROSENFELD - CROSS - PITLUCK

9861

1 right?

2 A Yes.

3 Q And you were speaking to him the whole time about your
4 investment in MSMB Healthcare and Retrophin, right?

5 A Right.

6 Q And isn't it true that the day after you got this e-mail
7 from Martin Shkreli, Ron Tilles bought 3,000 shares of your
8 Retrophin stock at a discount?

9 A I believe so, yes.

10 Q Because you needed the cash, right?

11 A Yes. And, also, because in the field of biotech, stock
12 can be ten dollars and tomorrow it can be a penny. So
13 sometimes it is best just to take your money off the table
14 rather than continually roll the dice in the complex and
15 entropy of biotech.

16 Q But just to be clear, the day after Martin Shkreli sends
17 you letter telling you you are getting more Retrophin stock,
18 your friend Ron Tilles, a Retrophin employee, buys 3,000 of
19 your shares at a discount?

20 A I believe so, that's correct.

21 Q Now, after this March 13, 2013 e-mail, you don't recall
22 having direct communications with the defendant, Mr. Greebel,
23 right?

24 A I think there were communications, again, via the e-mail
25 system, and telephone exchanges with Ron and possibly others,

ROSENFELD - CROSS - PITLUCK

9862

1 et al.

2 Q So let's unpack that a little bit. There were -- you
3 believe there were e-mail exchanges involving Ron and others,
4 and the defendant, right?

5 A Yes.

6 Q And were you a part of those, sir?

7 A Yes.

8 Q And do you remember any specifics about any conversation
9 that you had in March or April of 2013, with the defendant?

10 A To the best of my knowledge, I believe various
11 communications, but I'm not sure if they were by voice or
12 e-mail or text.

13 Q All right. So we talked a little bit, you testified
14 about this on direct, and in April 2013, you agreed to accept
15 a consulting agreement to resolve the open issues with your
16 MSMB Healthcare investment, right?

17 A Can you please repeat that date?

18 Q Sure. I said, in around April 2013, you agreed to accept
19 a consulting agreement in connection with the open issues
20 surrounding your MSMB Healthcare investment, right?

21 MR. MASTRO: Objection to form, Your Honor. Not
22 consistent.

23 MR. PITLUCK: Your Honor, speaking.

24 THE COURT: All right.

25 MR. PITLUCK: Fair question.

ROSENFELD - CROSS - PITLUCK

9863

1 THE COURT: Overruled.

2 BY MR. PITLUCK:

3 Q You can answer, sir.

4 A I believe there was a --

5 Q It's a yes or no question, sir.

6 A Oh. Repeat that question one more time, please.

7 MR. PITLUCK: Can the court reporter read it back?

8 I'm sorry.

9 THE COURT: Yes, please. Thank you.

10 (WHEREUPON, the record was read by the reporter as
11 requested.)

12 THE WITNESS: Your definition of "accept"?

13 BY MR. PITLUCK:

14 Q Your quibble, sir, is with my definition of "accept"?

15 A My apologies, but I did --

16 MR. MASTRO: Objection, Your Honor. Arguing with
17 the witness.

18 MR. PITLUCK: I asked a question.

19 THE COURT: Are you asking for his meaning of
20 "accept," or are you having difficulty understanding that?

21 THE WITNESS: The question I have is --

22 BY MR. PITLUCK:

23 Q Let me rephrase, Dr. Rosenfeld.

24 A Please. My apologies.

25 Q We'll try it again.

ROSENFELD - CROSS - PITLUCK

9864

1 A Right.

2 Q Isn't it true that in April 2013, you agreed to enter
3 into a consulting agreement to resolve the open issues
4 surrounding your MSMB Healthcare investment?

5 MR. MASTRO: Objection to form.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 BY MR. PITLUCK:

9 Q Yes.

10 And you saw that, a draft of that consulting
11 agreement on direct examination; do you remember that, sir?

12 A I do.

13 Q Do you still have, sir, do you still have your binder
14 that defense counsel gave you?

15 A Yes.

16 Q Can you open it up to tab 10, which is DX-203-3. It is
17 in evidence. This is an e-mail that you saw and testified
18 about on direct, from February 2014, from the defendant to
19 you, copying Marc Panoff. Do you remember that, sir?

20 A I do.

21 Q Can you go to the next page, which is the first page of
22 the consulting agreement and release, right?

23 A Yes.

24 Q Sorry. I will put it up. I apologize.

25 You see at the top there where it says, description

ROSENFELD - CROSS - PITLUCK

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1 of services?

2 A I do.

3 Q It says, strategic and corporate governance matters?

4 A Yes.

5 Q Yes or no, sir, you never discussed the strategic or

6 corporate governance services you were going to provide

7 Retrophin with the defendant, did you?

8 A No.

9 Q But you testified on direct, sir -- let me just take a
10 step back. That was a signed agreement. You signed that in
11 February of 2014; do you recall that?

12 A I do.

13 Q I think you testified a moment ago that it took almost a
14 year to actually finalize this agreement, right?

15 A Approximately, yes.

16 Q And between -- do you recall sitting here when you got
17 the first draft of the consulting agreement in connection with
18 Retrophin?

19 A April 2013.

20 Q So prior to April 2013, you didn't have any discussions
21 with anybody about -- at Retrophin, about what your consulting
22 role would be, did you, Dr. Rosenfeld?

23 A No.

24 Q So it wasn't until you actually got a consulting
25 agreement that, according to your testimony on direct, you

ROSENFELD - CROSS - PITLUCK

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1 actually started to discuss your consulting role, right?

2 A That's absolutely correct.

3 Q And people that you testified on direct that you
4 discussed this with, after you received the draft of the April
5 2013, were Ron Tilles, right?

6 A Yes.

7 Q And Mr. Tilles was, you testified today, your friend,
8 correct?

9 A Yes.

10 Q And an employee of Retrophin, right?

11 A Yes.

12 Q And somebody else you discussed it with was Ken Banta; is
13 that right, sir?

14 A That's correct.

15 Q I think you testified last week that you believe
16 Mr. Banta was on Retrophin's board of directors?

17 A Yes.

18 Q And you learned that from Mr. Banta?

19 A I'm not sure. I think I saw it in some of the promotions
20 that he was senior vice president. I'm just not sure anymore,
21 but I know he was involved somehow with the board. That's how
22 it was presented.

23 Q And you also spoke to, I think you testified on direct,
24 the CFO of Retrophin; is that right?

25 A That's right.

ROSENFELD - CROSS - PITLUCK

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1 Q You don't remember his name?

2 A Marc Panoff.

3 Q And, again, you had that -- those conversations after you
4 received the first draft of the consulting agreement in April
5 2013, correct?

6 A I think it may have been before.

7 Q Oh, so now it was before? Didn't you just tell me two
8 minutes ago that you didn't speak to anybody until after you
9 received the draft in April 2013?

10 A I may have been mistaken. I remember, now that you asked
11 the question, on a declaring basis, I believe that I had
12 conversations leading up to then, because this is, you know, a
13 number of years ago, then leading to this consulting
14 agreement. I think that was their solution, as an aggregate
15 of information between them, they presented this to me. And I
16 have to say, I was unhappy about this. I wanted -- I had no
17 other choice. I didn't want to be a consultant, but they
18 said, "Look. If you do this work, based upon this contract,
19 we will give you your shares." I guess that was the way they
20 were going to pay me, and I was reluctant to do the work, but
21 I wanted to get my money back at least, so I did it. And I
22 did it with alacrity.

23 THE COURT: When you say "they," who is "they"?

24 THE WITNESS: I'm sorry. That would be Ron Tilles,
25 Mr. Shkreli, and Mr. Banta, and Mr. Panoff.

ROSENFELD - CROSS - PITLUCK

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1 BY MR. PITLUCK:

2 Q And -- I'm sorry, go ahead.

3 A Those are the people that I had conferred with.

4 Q And it is your testimony here today that you conferred
5 with all of those people prior to receiving your agreement in
6 April of 2013?

7 MR. MASTRO: Objection to form, Your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: Yes.

10 MR. PITLUCK: Your Honor, this might be a good time
11 for a break.

12 THE COURT: All right. Why don't we give the jurors
13 their mid-morning break.

14 Don't talk about the case, please. And we will come
15 and retrieve you soon.

16 And, sir, you can step down.

17 THE WITNESS: Thank you.

18 (WHEREUPON, at 10:48 a.m., the jury exited the
19 courtroom.)

20 THE COURT: All right. See you in ten minutes.

21 MR. PITLUCK: Thank you.

22 (WHEREUPON, a recess was had at 10:50 a.m.)
23
24
25

Proceedings

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1 (In open court; 10:55 a.m.)

2 MR. BRODSKY: Your Honor, I just wanted to put
3 something on the record.

4 THE COURT: Yes.

5 MR. BRODSKY: It gives me no pleasure to say it.

6 THE COURT: Just speak up for the record.

7 MR. BRODSKY: I'll put the mic on.

8 It gives me no pleasure to bring up this issue, your
9 Honor, and to say it. Several people in the gallery have
10 observed Mr. Kessler laughing, nodding towards particular
11 jurors during the testimony of Dr. Rosenfeld. I did not
12 personally see it.

13 During the trial, we have noticed Mr. Kessler
14 expressing emotion during the testimony of witnesses. What we
15 would ask, your Honor, is that your Honor look over on
16 occasion. I know you're paying attention to the witness and
17 many things --

18 THE COURT: I think may be since Mr. Kessler is not
19 in the room -- he's just entering now -- I think that you
20 should say what you need to say about Mr. Kessler in his
21 presence.

22 MR. BRODSKY: Sure.

23 Again, it gives me no pleasure to raise the issue
24 about Mr. Kessler but several people in the audience noticed
25 that during the testimony of Mr. Rosenfeld, Mr. Kessler was

Proceedings

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1 visibly laughing and he was exchanging laughter with
2 particular jurors on the jury.

3 Mr. Kessler's -- we have notice the -- I didn't
4 notice this personally but several people in the gallery did
5 this morning. We have noticed Mr. Kessler, in the past,
6 during the trial, being visible with respect to his
7 expressions with respect to witnesses. But it got to the
8 point today that I think we believe we had to raise it with
9 the Court.

10 What we're asking for, your Honor, is that you -- we
11 hope that our putting it on the record and that your Honor
12 would from time to time look over and see whether or not
13 there's any visible expression from prosecutors, from
14 Mr. Kessler in particular, to just discourage the -- to
15 discourage that.

16 Thank you, your Honor.

17 THE COURT: All right.

18 Well, I will say I have not noticed. I do see from
19 time to time things going on at both the defense table and the
20 prosecutor's table that looks like chatter and maybe, you
21 know, little eyebrow raises or smirks. It's happened with
22 both. I'm not aware that the jurors are seeing it. I'm not
23 aware, I mean, I would certainly not say that anyone is trying
24 to send signals to the jury, but I will try to be aware of it
25 and I would just ask Mr. Brodsky whether the folks in the

Proceedings

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1 galley have observed it.

2 Can you identify who they are?

3 MR. BRODSKY: Yes, Your Honor our colleague Jason
4 Halpern and the father of Mr. Greebel.

5 THE COURT: All right. Thank you.

6 Mr. Kessler, if that is happening, please refrain.
7 I would like everybody to try to keep a very mask-like
8 expression toward the jury. I understand this has been a long
9 trial, and that from time to time tempers and frustrations
10 have grown, but let's just try to get through the finish of
11 this as smoothly as we can.

12 All right. So we will bring the jury back this
13 time.

14 I just have to say that Mr. Kessler's back is to
15 both of the individuals that you claim observed this, but I
16 will definitely keep my eyes open.

17 MR. BRODSKY: Your Honor, to that point --

18 THE COURT: I'm just saying.

19 MR. BRODSKY: It was so visible, it was so obvious
20 that that's what they say. We asked them as well. But the
21 laughter and the shaking and I noticed, for the record, your
22 Honor, Mr. Kessler is not disputing it.

23 THE COURT: Well, we can see if he disputes it. I
24 don't know.

25 Mr. Kessler, you haven't -- I haven't asked you to

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1 speak for your yourself.

2 MR. KESSLER: I didn't think there was anything I
3 needed to address, but I'm not communicating with any jurors
4 and we're trying to be composed here and communicate amongst
5 the prosecution team when we need to about issues that are
6 coming up during the cross that are related to other parts of
7 the trial that we're getting ready to get it.

8 THE COURT: All right. Thank you.

9 (A brief pause in the proceedings was held.)

10 MR. BRODSKY: I will also note, your Honor, that
11 there are two people sitting in the back row that have
12 indicated they saw it as well. Two women.

13 THE COURT: Who they affiliated with?

14 MR. BRODSKY: I don't know who they are.

15 THE COURT: Are they with a law firm.

16 AUDIENCE MEMBER: We're just friends with our friend
17 Jodi. And we saw one of the jurors, a blond woman in the
18 front, snickering when there was some of the stuff going on.

19 THE COURT: Well, jurors may from time to time, all
20 right, but I do think the allegation is that Mr. Pitluck --
21 Mr. Kessler --

22 MR. PITLUCK: I'm just asking questions, Judge.

23 THE COURT: Sorry, David Kessler was communicating
24 in some way with the jurors through facial expressions. We
25 can't prevent what the jurors say or feel since they've been

Proceedings

9873

1 here for nine months -- nine weeks -- and I'm sorry that they
2 are, they shouldn't be doing that, but I'd like to just finish
3 this trial.

4 When you say "Jodi," you mean Jodi, Mr. Greebel's
5 wife? Yes?

6 MR. BRODSKY: I believe so yes, Your Honor.

7 THE COURT: They nodded their heads I was hoping to
8 get an answer on the record.

9 AUDIENCE MEMBER: Yes, Your Honor.

10 THE COURT: Give us your names again. The court
11 reporter didn't hear you.

12 AUDIENCE MEMBER: Sharon Scholnick.

13 THE COURT: I don't believe your companion spoke,
14 did she?

15 AUDIENCE MEMBER: I'm not sure I spoke loud enough
16 that anyone heard me.

17 THE COURT: I don't think I heard you. If you want
18 to be heard, I'm happy to put your statement on the record.

19 AUDIENCE MEMBER: I also saw Mr. Kessler making
20 faces U your Honor. Dana Wiczynk, W-i-c-z-y-k.

21 THE COURT: Thank you.

22 (A brief pause in the proceedings was held.)

23 COURTROOM DEPUTY: All rise.

24 (Jury enters courtroom at 11:10 a.m.)

25 THE COURT: All jurors are present. Please have a

Dr. Rosenfeld - Cross/Mr. Pitluck

9874

1 seat. You may resume your cross, Mr. Pitluck.

2 MR. PITLUCK: Thank you, your Honor.

3 EXAMINATION BY

4 MR. PITLUCK:

5 (Continuing.)

6 Q Yes or no, Dr. Rosenfeld, you know that Marc Panoff
7 wasn't hired as a CEO of Retrophin until May of 2013?

8 A No.

9 THE COURT: Is the microphone on?

10 You can answer the question.

11 A No.

12 Q But in May of 2013, you were pushing Ron Tilles to get
13 this disagreement resolved; correct?

14 A Correct.

15 Q And do you recall receiving an updated draft of the
16 consulting agreement on May 28, 2013?

17 A I remember in April --

18 Q Okay. Let me see if I can refresh your recollection.

19 A -- of 2013.

20 MR. PITLUCK: Your Honor, if I may approach? I
21 would like to show the witness Government Exhibit 117-50?

22 THE COURT: All right. Thank you.

23 MR. PITLUCK: For identification.

24 (Approaching the witness.)

25 Q Let me know, please, sir, when you've had a chance to

Dr. Rosenfeld - Cross/Mr. Pitluck

9875

1 look at that and whether it refreshes your recollection that
2 you received an updated draft of the consulting agreement on
3 May 28, 2013.

4 A Yes.

5 MR. PITLUCK: Your Honor, we offer Government
6 Exhibit 117-50 into evidence.

7 MR. MASTRO: No objection, your Honor.

8 THE COURT: We receive in evidence Government
9 Exhibit 117-50.

10 (Government's Exhibit 117-50 was received in
11 evidence as of this date.)

12 MR. PITLUCK: If I could have the Elmo, please,
13 Ms. Jackson.

14 Q There is an e-mail exchange that you received on May 28,
15 2013; correct?

16 A Correct.

17 Q From Ron Tilles; is that right?

18 A Correct.

19 Q And it's forwarding an e-mail from the defendant to
20 Mr. Tilles on May 24, 2013; right?

21 A Right.

22 Q And if I can direct your attention to the third page of
23 the document.

24 You'll see that there's a description of services
25 there; right?

Dr. Rosenfeld - Cross/Mr. Pitluck

9876

1 A Right.

2 Q Saying "Description of Services," or "Strategic and
3 Corporate Governance Matter for the Management of the
4 Company"?

5 A Yes.

6 Q And, as compensation, you're getting 60,000 shares of
7 common stock.

8 Do you see that?

9 A Yes.

10 Q And I just want to move down real quick to the
11 Representation and Warranty paragraph, do you see that?

12 Paragraph 4A. It says, "Consultant represents and
13 warrants to company that."

14 Do you see that there towards the middle of the
15 screen?

16 A Yes.

17 Q And there are Roman numerals I through VI. Do you see
18 those?

19 A I do.

20 Q Do you recall asking to have those removed from your
21 consulting agreement?

22 A I'm not sure.

23 Q You're not sure one way or the other?

24 A I don't recall.

25 Q Okay. Now, after you received this draft, you asked for

Dr. Rosenfeld - Cross/Mr. Pitluck

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1 more shares of stock; right?

2 A Yes.

3 Q You asked for 15,000 shares more?

4 A I did ask for more, but I'm not sure of the number.

5 Q And you asked for more, Dr. Rosenfeld, because you
6 believed that your money had been used as a bridge loan for
7 two years and you were entitled to more than 60,000 shares;
8 right?

9 A Right.

10 Q But you don't remember asking specifically for 15,000
11 shares?

12 A I definitely asked for more, but the exact amounts I
13 think there was in negotiations throughout prior to the April,
14 I mean, after the April 2013 consulting agreement leading up
15 to the February 2014 consulting agreement.

16 Q We'll get to that, Dr. Rosenfeld.

17 But when I ask you specifically if you remember
18 meeting with Ron Tilles on June 12, 2013?

19 A Yes, it's possible. Sure.

20 Q Yes, it's possible; or, yes, you actually remember
21 meeting him on June 12, 2013?

22 A I'm not sure of the date.

23 Q Okay. Let me see if I can give you something that
24 refreshes your recollection.

25 MR. PITLUCK: Approach, Judge.

Dr. Rosenfeld - Cross/Mr. Pitluck

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1 THE COURT: Yes.

2 MR. PITLUCK: Showing the witness for identification
3 117-55, a one-page document.

4 (Hanging).

5 Q If I can just direct you to about two-thirds of the way
6 down the page and ask if that refreshes your recollection that
7 you met with Ron Tilles on June 12, 2013?

8 A It does.

9 Q And during your meeting with Ron Tilles on June 12, 2013,
10 do you recall asking him for more shares of Retrophin to go
11 away so that you can go awe?

12 MR. MASTRO: Objection. Hearsay.

13 MR. PITLUCK: It's not for the truth, Judge. State
14 of mind.

15 THE COURT: All right. I will admit, members of the
16 jury, not for the truth but to show the state of mind.

17 EXAMINATION BY

18 MR. PITLUCK:

19 (Continuing.)

20 Q Dr. Rosenfeld, do you recall telling Ron Tilles during
21 that meeting that you wanted more shares of Retrophin to go
22 away?

23 MR. MASTRO: Same objection, your Honor.

24 THE COURT: Overruled.

25 A That's possible.

Dr. Rosenfeld - Cross/Mr. Pitluck

9879

1 Q You didn't actually resolve your dispute with Martin
2 Shkreli in June of 2013, did you, sir?

3 A I did not.

4 Q In fact, through July and August of 2013, you're
5 continuing to get in touch with Ron Tilles to ask what's going
6 on with your investment in MSMB Healthcare; right?

7 A Right.

8 Q When Mr. Tilles could talk to you about Retrophin; right?

9 A Right.

10 Q And that's, in fact, going on through September of 2013;
11 right, sir?

12 A Yes.

13 Q Now, do you recall exchanging text messages with
14 Mr. Tilles in September 2013 where you tell him that you're
15 getting tired of getting jerked around?

16 MR. MASTRO: Objection. Hearsay.

17 THE COURT: Sustained.

18 MR. PITLUCK: Same state of mind. This isn't being
19 offered --

20 THE COURT: All right.

21 Again, members of the jury, this testimony is not
22 being offered for the truth, but to give you -- it's offered
23 as evidence of the state of mind of the individuals involved
24 in the exchanges.

25 THE WITNESS: Yes. I'm not sure of the exact date,

Dr. Rosenfeld - Cross/Mr. Pitluck

9880

1 though, in September.

2 Q But you do remember telling Mr. Tilles that you were
3 getting tired of getting jerked around?

4 MR. MASTRO: Same objection, your Honor.

5 THE COURT: Same ruling. Overruled.

6 A Yes.

7 Q And at the same time, you're trying to set up a meeting
8 with the CFO of Retrophin; right?

9 If you can't remember, sir, I will try to refresh
10 your recollection.

11 A Please.

12 Q I'm going to show you what's been marked for
13 identification only Government Exhibit 117-76. I'm asking you
14 to focus on the e-mails on the first page or the messages on
15 the first page.

16 A Thank you.

17 (Handing).

18 Q Does that refresh your recollection, sir, that at the end
19 of September 2013, you're trying to get Ron Tilles to set up a
20 meeting with the CFO?

21 A Yes.

22 Q And, in October of 2013, you're still communicating with
23 Ron Tilles trying to get a resolution to this dispute; right?

24 A Yes.

25 Q And, in fact, in October of 2013, you wrote Mr. Tilles an

Dr. Rosenfeld - Cross/Mr. Pitluck

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1 e-mail laying out your claims related to the MSMB Healthcare
2 investment and asking for more shares.

3 Do you remember that?

4 MR. MASTRO: Objection. Hearsay.

5 THE COURT: Same basis Mr. Pitluck?

6 MR. PITLUCK: Your Honor, I'm just asking if he
7 remembers sending an e-mail.

8 THE COURT: All right. Overruled.

9 Q Do you remember that, sir?

10 A Again, I'm not sure of the date, but I do remember
11 negotiating with Ron Tilles.

12 Q And sending him an e-mail pursuant to those negotiations?

13 A An e-mail or a text, yes.

14 MR. PITLUCK: May I approach, Judge.

15 THE COURT: Yes.

16 MR. PITLUCK: Showing the witness what has been
17 marked for identification as Government Exhibit 117-80.

18 (Hanging).

19 Q That's an e-mail from you to Ron Tilles on October 7,
20 2013?

21 A Yes.

22 MR. PITLUCK: Your Honor, we'd offer Government
23 Exhibit 117-80 into evidence.

24 MR. MASTRO: No objection, your Honor.

25 THE COURT: We receive in evidence Government

Dr. Rosenfeld - Cross/Mr. Pitluck

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1 Exhibit 117-80.

2 (Government's Exhibit 117-80 was received in
3 evidence as of this date.)

4 EXAMINATION BY

5 MR. PITLUCK:

6 (Continuing.)

7 Q Putting it up there so the jury can see it,
8 Dr. Rosenfeld, this is an e-mail that you wrote to
9 rontilles@gmail.com; correct, on October 7, 2013?

10 A Yes.

11 Q That's your e-mail address stevenrosenfeldmd@gmail.com?

12 A Yes.

13 Q You wrote in the subject line, "Draft, Confidential and
14 Not for Distribution." Right?

15 A Yes.

16 Q And this e-mail was an effort to resolve a dispute
17 related to your MSMB Healthcare; correct, sir?

18 A Correct.

19 Q And you wrote, "Pre-IPO \$200,000 was commingled into
20 Retrophin without my permission. Reference your bank
21 account."

22 Is that right, sir?

23 A That's right.

24 Q You wrote, "Retrophin had less assets post-IPO than what
25 was written."

Dr. Rosenfeld - Cross/Mr. Pitluck

9883

1 Is that right, sir?

2 A Yes.

3 Q And you wrote, "Please review your evaluation of
4 Retrophin post-IP0 and pre-IP0."

5 Correct?

6 A Correct.

7 Q And finally, you wrote, "Family and friends around
8 pre-IP0 justifies," I'm interpreting that's a greater than,
9 "300,000 shares."

10 Is that right, sir?

11 A That's correct.

12 Q And you were trying to get more than 300,000 shares as a
13 resolution of your dispute; right, sir?

14 A Right.

15 Q No mention of consulting in this e-mail, though; right,
16 sir?

17 Yes or no?

18 A Yes.

19 Q Yes, I'm right there's no mention of consulting?

20 A That's correct.

21 Q Okay. And also, in this time in October of 2013, you met
22 with Ken Banta; right?

23 A That's correct.

24 Q And isn't it true, Dr. Rosenfeld, that this is the first
25 time that you met Ken Banta?

Dr. Rosenfeld - Cross/Mr. Pitluck

9884

1 A Yes.

2 Q And you met Ken Banta in October of 2013 because Ron
3 Tilles put you in touch with him; right?

4 A Right.

5 Q Six months after you were first given a draft of the
6 consulting agreement, approximately, six months?

7 A Yes.

8 Q As you proceeded through October and November 2013, you
9 still haven't been able to resolve your dispute; correct?

10 A Correct.

11 Q But you're staying in touch with Ron Tilles; right?

12 A Right.

13 Q And you're pushing him to try to go to Retrophin and see
14 if he can get something done; right?

15 A Right.

16 Q Isn't it true, sir, that in November of 2013, you wrote
17 to Mr. Tilles that, "This negotiation is becoming bizarre and
18 I'm jerked around to buy them time."

19 MR. MASTRO: Objection. Hearsay.

20 MR. PITLUCK: Same purpose, Judge.

21 THE COURT: Overruled. Again, this is offered to
22 show state of mind. Not for the truth.

23 You may answer the question.

24 A Yes. I'm not sure of the exact date, but that statement
25 is made.

Dr. Rosenfeld - Cross/Mr. Pitluck

9885

1 Q And then, as we proceeded into December of 2013, you were
2 pushing Ron Tilles to get you an offer in writing; right?

3 A Yes.

4 Q Something that you could sign and get your shares;
5 correct?

6 A Correct.

7 Q And you believe that this time that Ron Tilles was
8 stalling you; right?

9 A Yes.

10 Q And that if he didn't get something in writing soon you
11 were going to engage Stuart Meissner to talk to the defendant;
12 right?

13 A Right.

14 Q And in mid-December 2010, you wrote to Mr. Tilles that
15 you were willing to settle but Retrophin was not.

16 Do you remember writing that, sir?

17 A Can you go over that date again, please?

18 Q Middle of December 2010?

19 A 2010?

20 Q I'm sorry, I apologize, December 10, 2013.

21 THE COURT: Why don't you rephrase the question.

22 Q Do you recall writing on December 10, 2013, that you were
23 willing to settle but Retrophin is not?

24 A Yes.

25 Q In fact, in early January 2014, you went to Ron Tilles

Dr. Rosenfeld - Cross/Mr. Pitluck

9886

1 and Marc Panoff and offered to settle for \$1 million?

2 A They proposed that to me and I said, okay, I'll take
3 that.

4 Q Your testimony is they proposed it to you and you said --

5 MR. MASTRO: Objection. Hearsay.

6 THE COURT: It's the same basis? Am I correct or
7 not?

8 MS. SMITH: Same basis, Judge.

9 THE COURT: Overruled. Do you want a sidebar,
10 Mr. Mastro?

11 MR. MASTRO: Your Honor, I'd rather not have a
12 sidebar, but --

13 MS. SMITH: Your Honor, I would rather have a
14 speaking objection.

15 THE COURT: If there's anything going beyond the
16 objection and a basis.

17 MR. MASTRO: I will be very brief, your Honor.
18 Sorry.

19 (Continued on the next page.)
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Sidebar**9887**

1 (Sidebar conference held on the record in the
2 presence of the Court and counsel, out of the hearing of the
3 jury.)

4 MR. MASTRO: I'll be very brief. It's one thing
5 that he said reflecting his state of mind of state of mind is
6 the state of mind of the declarant. Under the rule now, he's
7 elicited testimony he asked, "Did you say this?" But then he
8 responded, "They proposed the 1 million." So that doesn't --
9 that doesn't come in under state of mind exception to hearsay,
10 a declaration by him.

11 THE COURT: I understand it's the effect on the
12 listener. Then there's a negotiation going on, so.

13 MR. PITLUCK: Offers are not hearsay. An offer from
14 the party -- we've had this. An offer from one person to
15 another is not hearsay, it can't be.

16 THE COURT: They're negotiating during this time;
17 right?

18 MR. MASTRO: Well, your Honor, we actually had some
19 issues where we said an offer was made.

20 THE COURT: That's not true. I've given you a lot
21 of latitude and I've let things in on the same grounds that
22 you are proffering here and those were not even negotiations.
23 I admitted a lot of evidence that were negotiations that you
24 were offering either as the effect on the listener, or the
25 then existing state of mind of the declarant. The Government

Sidebar

9888

1 is offering these as negotiations which I can instruct the
2 jury that --

3 MR. PITLUCK: Judge, I don't think that an offer is
4 hearsay requiring an instruction.

5 THE COURT: It's true.

6 MR. PITLUCK: The fact that it was said to him an
7 offer was made.

8 MR. MASTRO: I simply suggest, your Honor, that
9 since that offer was described as an offer which was actually
10 just a discussion and not something that is ever formally
11 offered or later agreed upon, you have any discussion with
12 something at a lower level of a company that doesn't realize
13 it's an offer made by the company.

14 So I think it's a little misleading to the jury to
15 describe it that way.

16 THE COURT: Mr. Shkreli has referred Dr. Rosenfeld
17 to Ron Tilles and gave him apparent authority to negotiate
18 with Dr. Rosenfeld about parameters of any resolution of this.

19 So whether or not they're authorized to negotiate
20 with the company is not the issue. The issue is whether he
21 was given reason to believe that Mr. Tilles was able to
22 negotiate on behalf of the company.

23 MR. MASTRO: Okay. I understand, your Honor's
24 ruling.

25 THE COURT: Thank you.

Sidebar

9889

1 (Sidebar discussion concludes.)

2 (Continued on the next page.)

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Dr. Rosenfeld - Cross/Mr. Pitluck

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1 (In open court.)

2 THE COURT: Did you want to rephrase your question
3 or reask it so that --

4 MR. PITLUCK: Quite frankly, I forgot what question
5 I was asking.

6 Can the court reporter read it back?

7 (The requested portion of the record was read back
8 by the Official Court Reporter.)

9 THE COURT: You'll have to rephrase the question
10 then.

11 EXAMINATION BY

12 MR. PITLUCK:

13 (Continuing.)

14 Q So, Dr. Rosenfeld, I believe you testified before the
15 brief sidebar that Mr. Panoff and Mr. Tilles offered you
16 \$1 million to settle your dispute and you accepted it; is that
17 right?

18 A Ron Tilles was the one who mentioned it to me over the
19 phone.

20 Q Okay. So it was just Mr. Tilles who made that offer to
21 you over the phone; is that right?

22 A That's right.

23 Q And did you ever discuss that offer with the defendant,
24 Evan Greebel?

25 A I don't think so.

Dr. Rosenfeld - Cross/Mr. Pitluck

9891

1 Q And you recall offering Mr. Tilles in the January 9,
2 2014, to settle for \$125,000 in cash and \$125,000 in
3 free-trading Retrophin shares.

4 Do you recall making that offer?

5 A There were various negotiations. It's very possible I
6 made that offer.

7 Q You also spoke to Ken Banta around this time, and you
8 said you were looking for an agreement on paper that would
9 bring things to a close.

10 Do you remember saying that?

11 A Yes.

12 Q And, as we saw on your direct examination, in
13 February 2014 you finally signed an agreement; right?

14 A Right.

15 Q You testified a little bit about that agreement, sir, but
16 isn't to true that you got \$200,000 and 66,000 shares of
17 Retrophin stock; right?

18 A Right.

19 Q And wouldn't you agree with me, Dr. Rosenfeld, that at
20 the time you signed this offer that equaled about a million
21 dollars?

22 A I'm not sure of the stock price at the time, but I know
23 it was extremely volatile at all times.

24 Q Do you remember being asked about this issue in your
25 arbitration proceeding?

Dr. Rosenfeld - Cross/Mr. Pitluck

9892

1 A Yes, but in one moment, since they were restricted
2 shares, I just want everyone to know that means you cannot
3 sell them for six months and, therefore, being the
4 prognosticator that I was, I took a chance and decided that
5 six months was a long time and shares can go up and they can
6 go down. It's very precarious.

7 (Continued on the next page.)
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Rosenfeld - Cross - Pitluck

9893

1 BY MR. PITLUCK:

2 Q Thank you, Dr. Rosenfeld. That was not really my
3 question.

4 My question was, do you remember being asked in
5 the arbitration proceeding whether the value of your money
6 and stock received in the consulting agreement equalled
7 approximately \$1 million?

8 A That is possible.

9 Q Do you remember agreeing with that?

10 A I do not recall.

11 Q Let me see if I can refresh your recollection.

12 Can you go to the binder I gave you in the
13 deposition transcript in there and go to Page 922.
14 Question 24 to 923, Question 5 -- or Line 5, I'm sorry.

15 A It is a big assumption.

16 Q Did you agree with it, 923, Line 5?

17 A Yes.

18 Q And you got 66,000 shares in four different tranches,
19 correct, Dr. Rosenfeld?

20 A Yes.

21 Q Now, isn't it true, Dr. Rosenfeld, that of the shares
22 you received in Retrophin, you sold most of them to Ron
23 Tilles?

24 A Yes.

25 Q And you sold most of them to him at a discount

Rosenfeld - Cross - Pitluck

9894

1 somewhere between 20 and 40 percent market rates; is that
2 right?

3 A Yes.

4 Q Now, prior to signing this consulting agreement in
5 February of 2014, yes or no, you never had a consulting
6 agreement before, correct, sir -- or I'm sorry, yes or no,
7 you have never had a consulting agreement before?

8 A That is correct.

9 Q This is your first one, right?

10 A That is correct.

11 Q And, yes or no, you have never been paid in any way for
12 consulting services, right?

13 A That is correct.

14 Q Never been an employee of a biotechnology company,
15 right, sir?

16 A Only an investor.

17 Q Only an investor.

18 But you have never been an employee of a
19 pharmaceutical company, right?

20 A That is correct.

21 Q And when you signed this agreement in February of
22 2013 -- I'm sorry, February of 2014, you were not an
23 executive of Retrophin were you?

24 A No.

25 Q You were not an employee of Retrophin, right?

Rosenfeld - Cross - Pitluck

9895

1 A Right.

2 Q You were not departing from Retrophin in any way,
3 right?

4 A Right.

5 Q And, yes or no, Dr. Rosenfeld, that after you signed
6 this consulting agreement in February of 2014, the only
7 person you spoke with at Retrophin about your consulting was
8 Ron Tilles, right?

9 A Yes.

10 Q You never consulted with Martin Shkreli, right,
11 following after you signed this agreement in February of
12 2014?

13 A Right.

14 Q Never consulted with someone named Stephen Aselage,
15 right?

16 A Right.

17 Q Never consulted with any of the scientists that may
18 have been employed at Retrophin, right?

19 A Right.

20 Q Never spoke to somebody named Alan Geller, right?

21 A Right.

22 Q Or somebody named Darren Blanton? Never spoke to him,
23 right?

24 A Right.

25 Q You do not know either of those individuals, do you,

Rosenfeld - Cross - Pitluck

9896

1 Dr. Rosenfeld?

2 A No.

3 Q And you did know, sir, at the time you signed your
4 agreement that Retrophin had a separate business development
5 group in February, 2014, right?

6 A I'm not sure about that the statement.

7 Q Okay. You are not sure one way or the other if you
8 knew whether Retrophin had a separate business development
9 crew?

10 A It is possible, but I'm not sure.

11 Q So I guess it is safe to say, then, Dr. Rosenfeld, you
12 never spoke to anybody in Retrophin, a Retrophin business
13 development group during your course as a consultant for
14 Retrophin, right?

15 MR. MASTRO: Objection, Your Honor. Objection to
16 form.

17 MR. PITLUCK: Your Honor, I'll withdraw the
18 question.

19 THE COURT: All right. Re-ask.

20 Q So you never spoke to anyone, any Retrophin business
21 development agreement after signing your consulting
22 agreement in February, 2014, correct?

23 MR. MASTRO: Objection.

24 THE COURT: Overruled.

25 A Just Ron Tilles who was business development.

Rosenfeld - Cross - Pitluck

9897

1 Q Just Ron, Ron Tilles.

2 And you were never given any kind of internal
3 Retrophin documents about how they developed drugs; is that
4 correct?

5 A That is correct.

6 Q Or what drug they were interested in in their pipeline,
7 correct?

8 A I think public information, I did know what they were
9 interested in.

10 Q The public information that was released in SEC filings
11 and press releases; is that right?

12 A That is right.

13 Q And you, Dr. Rosenfeld, didn't generate any kind of
14 reports related to your work for Retrophin, did you?

15 A No.

16 Q No time records keeping track of your development
17 efforts?

18 A I have a volume of telephone calls to Ron Tilles
19 discussing different items and different various topics.

20 Q Just to be clear, Dr. Rosenfeld, when you say volume of
21 telephone calls, you mean your phone records, right?

22 A That is correct.

23 Q Showing that you made calls to Ron Tilles, correct?

24 A That is correct.

25 Q And you didn't create any presentations for Retrophin,

Rosenfeld - Cross - Pitluck

9898

1 right?

2 A That is correct.

3 Q And other than Ron Tilles you do not have any records
4 of communication either by phone or e-mail with anyone at
5 Retrophin during the period of your consulting agreement,
6 right?

7 A Repeat that again, I'm sorry.

8 Q Sure.

9 You do not have a record, yes or no, sir, of any
10 communications you had, either e-mail or phone calls, with
11 anyone at Retrophin that was not Ron Tilles?

12 A I think that is accurate, yes.

13 Q Now, you learned, Dr. Rosenfeld, didn't you, that
14 Martin Shkreli was fired from Retrophin in September of
15 2014, correct?

16 A Yes.

17 Q I think you testified about it on direct that after
18 Martin Shkreli was fired, Mr. Aselage reached out to you in
19 October of 2014, right?

20 A Right.

21 Q And I think we saw, and I would like to direct your
22 attention to Defense Exhibit 203-5, which is Tab 14 in the
23 binder that Mr. Mastro gave you. Can you go to that, sir;
24 do you have that?

25 A Yes.

Rosenfeld - Cross - Pitluck

9899

1 Q Do you remember looking at this on direct examination,
2 sir?

3 A Yes.

4 MR. PITLUCK: I realize now that it is in evidence
5 and I'm not posting it for the jury, Your Honor, I am just
6 going to put this on the Elmo.

7 THE COURT: All right.

8 Q Okay. This is a three-paged document, correct,
9 Dr. Rosenfeld?

10 MR. MASTRO: Your Honor, I do not believe it was
11 admitted into evidence.

12 THE COURT: I'm not showing it either.

13 MR. PITLUCK: Oh, I apologize, Judge, I had it.

14 THE COURT: Okay. Just --

15 MR. PITLUCK: Well, Your Honor, at this point we
16 would offer it into evidence.

17 THE COURT: Do you want to use the Defense Exhibit
18 designation 203-5?

19 MR. PITLUCK: That is fine, Judge.

20 THE COURT: All right.

21 Okay. Any objection, Mr. Mastro.

22 MR. MASTRO: No objection, Your Honor.

23 THE COURT: All right. We will receive in
24 evidence Defense Exhibit 203-5 offered by the Government.

25 (Defendant's Exhibit Number 203-5 so marked and

Rosenfeld - Cross - Pitluck

9900

1 received in evidence.)

2 MR. PITLUCK: Thank you, Your Honor.

3 Q I'm going to direct your attention to the second page
4 of this document, Dr. Rosenfeld, which is actually the first
5 e-mail. There's nothing on the third page. But is this an
6 October 15, 2014, e-mail from Mr. Aselage to you?

7 A Yes.

8 Q And could you just read it for the jury, please.

9 A Dear Dr. Rosenfeld, As you are probably aware,
10 Mr. Shkreli is no longer with Retrophin. In reviewing a
11 number of contracts, it came to light that the company has a
12 consulting contract with you and has paid both cash and
13 stock to you in exchange for your consulting services.

14 Apparently, additional stock will be owed in
15 December. Specifically it mentions you helping with
16 governance. I was head of governance committee last year
17 and do not recall any interaction with you.

18 Can you tell me what exactly has been the
19 consulting you have done for the company?

20 Thanks in advance, Steve Aselage --

21 Q And -- I'm sorry. Go ahead.

22 A -- Interim CEO.

23 Q All right. That was October 15th, 2014, correct,
24 Dr. Rosenfeld?

25 A Correct.

Rosenfeld - Cross - Pitluck

9901

1 Q Do you remember receiving this e-mail, sir?

2 A I do.

3 Q If we go up one more line to your response on
4 November 20th, 2014. I'm sorry, that is blurry.

5 Can you see that, Dr. Rosenfeld, your response on
6 October 20, 2014?

7 A I do.

8 Q It is a little over a month later, correct, sir?

9 A Correct.

10 Q Can you read what you wrote in response to
11 Mr. Aselage's e-mail?

12 A Hi, Steve, Sorry I missed this. I received your
13 inquiry and I am quite surprised. I have provided
14 substantive services.

15 Steve, please let me know if there is an issue
16 with my shares in December. Best regards, Steven.

17 Q That is November 20th, 2014, correct, sir?

18 A Correct.

19 Q I'm just going to show you the front page of this
20 e-mail. The bottom e-mail, if you can see that, it is an
21 e-mail on November 20th, 2014, same day, from Mr. Aselage to
22 you?

23 A I'm sorry, what date?

24 Q Oh, I'm sorry. If you look on the screen,
25 Dr. Rosenfeld --

Rosenfeld - Cross - Pitluck

9902

1 A Oh, okay.

2 Q -- it may be helpful. Looking at the bottom e-mail
3 November 20th, 2014, at 12:39 p.m. And I would just like
4 you to read what Mr. Aselage wrote to you.

5 A It says, Please send documentation of the services you
6 provided. At this time, there is indeed, an issue. Thank
7 you.

8 Q And if you can just go up to the next e-mail also on
9 November 20th, 2014, from you to Mr. Aselage, what did you
10 write there?

11 A It says, Hi, Steve, Just to be clear are you saying you
12 will not issue my earned shares in December. Kind regards,
13 Stephen.

14 Q Finally in the top e-mail, which is also on
15 November 20th, 2014, what did Mr. Aselage write?

16 A Need documentation of your consulting activities to
17 issue additional shares.

18 Q So in that e-mail exchange, Dr. Rosenfeld, am I correct
19 that Mr. Aselage asks for information on your consulting
20 activity three separate times?

21 A Yes.

22 Q But as far as you know, as far as you recall, you did
23 not respond to this last e-mail from Mr. Aselage on
24 November 20th, 2014; is that right?

25 MR. MASTRO: Objection to form.

Rosenfeld - Cross - Pitluck

9903

1 THE COURT: Can you rephrase it, it is a little
2 garbled?

3 MR. PITLUCK: I'll try, Judge.

4 THE COURT: All right.

5 MR. PITLUCK: I will back up so you can see it.

6 Q This top e-mail from Mr. Aselage on November 20th,
7 2014, as far as you recall, you never responded to that
8 e-mail, correct, sir?

9 MR. MASTRO: Same objection.

10 THE COURT: Overruled.

11 A I guess I'm not sure if I did respond, but I know it
12 was a very busy timeframe. And I conferred with my lawyers.

13 THE COURT: Do not tell us what your lawyers said.

14 THE WITNESS: Right.

15 Q So I'm definitely not asking you about the
16 conversations with your lawyers, Dr. Rosenfeld, but I am
17 going to ask you if you were communicating with Ron Tilles
18 at the time that you received that e-mail from Mr. Aselage
19 on November 20th, 2014?

20 A Yes.

21 Q And, in fact, you were speaking to Mr. Tilles about the
22 e-mail that you received from Mr. Aselage, correct?

23 A Correct.

24 Q And, in fact, Mr. Tilles reached out to you to ask what
25 happened with Mr. Aselage, didn't he?

Rosenfeld - Cross - Pitluck

9904

1 A Yes.

2 Q And you responded to Mr. Tilles about how you were
3 going to respond Mr. Aselage, correct?

4 A Yes.

5 Q And isn't it true that you wanted to meet with
6 Mr. Tilles around this time to discuss your response?

7 A Yes, that is possible.

8 Q And that Mr. Tilles suggested that you wait to get back
9 to Mr. Aselage, do you recall that?

10 A I'm not sure on that.

11 Q Okay. Maybe I can show you something that will refresh
12 your recollection.

13 A Thank you.

14 MR. PITLUCK: For identification only this is
15 Government's Exhibit 117-110.

16 BY MR. PITLUCK:

17 Q I would like to direct your attention to the middle of
18 the page to the text messages between you and Mr. Tilles,
19 particularly the text message on October 16, 2014, at
20 9:04 a.m.

21 See if that refreshes your recollection.

22 A It does.

23 Q It does refresh your recollection that Mr. Tilles asked
24 you wait to answer Mr. Aselage's e-mail, correct?

25 A Correct.

Rosenfeld - Cross - Pitluck

9905

1 Q And a moment ago we looked at an e-mail where you wrote
2 to Mr. Aselage that you had missed his e-mail, do you
3 remember that, sir?

4 A Yes.

5 Q In fact, you had not missed his e-mail, had you?

6 A As far as I remember, that is what I wrote.

7 Q But didn't we just look at text messages from the same
8 date that Mr. Aselage sent you an e-mail where you were
9 discussing that very same e-mail?

10 A Yes.

11 Q Okay. So you did not miss the e-mail, did you,
12 Dr. Rosenfeld?

13 A No.

14 Q Now, it was after this exchange you continue to try to
15 get the last set of shares that were owed to you in December
16 of 2014, correct?

17 A That is correct.

18 Q And you did not receive them, right?

19 A Right.

20 Q And you did not receive them and that is why you filed
21 your arbitration demand in April of 2015, correct?

22 A Yes.

23 Q And prior to filing your arbitration demand, did you
24 ever tell Mr. Aselage to consult -- the specific consulting
25 services you had performed?

Rosenfeld - Cross - Pitluck

9906

1 A I think I discussed it with Ron Tilles.

2 Q You discussed it with Ron Tilles. But, Dr. Rosenfeld,
3 that was not what I asked. I asked if you discussed it with
4 Mr. Aselage between his e-mail on October, 2014 and your
5 arbitration demand in April of 2015?

6 A I did not.

7 Q But during your arbitration proceeding and again here
8 today you testified or -- withdrawn.

9 In your arbitration proceeding you testified about
10 some of the consulting services you said you provided,
11 correct?

12 A Yes.

13 Q And you discussed some of them last week on direct
14 examination, right?

15 A Right.

16 Q And I think one of the ones you discussed last week was
17 something called Axiomee. Do you remember testifying about
18 that, sir?

19 A I do.

20 Q I believe your testimony at Page 9279 was that it was a
21 German prosthetics distribution company you learned of; is
22 that right, sir?

23 A That is correct.

24 Q And you learned of this investment from your friend
25 Dr. David Carter; is that right?

Rosenfeld - Cross - Pitluck

9907

1 A Mr. David Carter.

2 Q Oh, I'm sorry.

3 Okay. Mr. David Carter.

4 And you learned that you said Axiomee was looking
5 to raise \$1 million, correct?

6 A Correct.

7 Q And isn't it true, Dr. Rosenfeld, that Mr. Carter asked
8 you to invest in Axiomee, right?

9 A Correct.

10 Q And I think it was your testimony on direct examination
11 that you passed that opportunity on to Mr. Tilles, right?

12 A Correct.

13 Q And did you pass it on to anybody else at Retrophin
14 besides Mr. Tilles?

15 A No.

16 Q And yes or no, Dr. Rosenfeld, you believed at the time
17 that Retrophin an orphan drug company would be interested in
18 investing in a German prosthetics distribution company?

19 A Absolutely.

20 Q And yes or no, Dr. Rosenfeld, but if Retrophin had
21 invested in Axiomee Mr. Carter would have paid you a
22 finder's fee for that, right?

23 A No.

24 Q Do you remember being asked about this in your
25 arbitration proceedings?

Rosenfeld - Cross - Pitluck

9908

1 A When I say no, I mean that if he wanted to, he might
2 have said, well, you should get something out of this. But
3 I do not think that was the intention, we were just trying
4 to see at that time whether Retrophin would be interested in
5 this company. And again, I think it was Dr. Proper, the
6 pediatrician via Dean Cayman --

7 Q Dr. Rosenfeld, it was a yes-or-no question. Do you
8 recall being asked about this in your arbitration
9 proceeding?

10 A Yes.

11 Q Okay. And do you recall testifying that you hopefully
12 would have gotten something if Retrophin had invested in
13 Axiomee?

14 A Yes.

15 Q And Retrophin never invested in Axiomee, right?

16 A No.

17 Q And you also testified on direct examination about
18 another opportunity related to a drug called -- and correct
19 me if I am wrong -- AmiKet or Amicar? Which one is it,
20 Dr. Rosenfeld?

21 A AmiKet.

22 Q AmiKet. Can you just spell for the court reporter,
23 please, to make sure? I do not know how to spell it. I
24 apologize, Dr. Rosenfeld.

25 A I'm not the greatest speller, but it is A-M as in Mary,

Rosenfeld - Cross - Pitluck

9909

1 I as in ice cream, K as in kitchen, E as in Elmo, T as in
2 Tom.

3 Q And this was a drug developed by a biotechnology
4 company, right?

5 A That is correct.

6 Q And what kind of drug was it?

7 A To be a pain cream.

8 Q A pain cream?

9 A Cream.

10 Q Like you apply on your skin?

11 A Correct, topical.

12 Q And that deal first came to you in 2013, correct?

13 A Approximately around that time.

14 Q So before you entered into your consulting agreement
15 with Retrophin, right?

16 A Correct.

17 Q And isn't it true, Dr. Rosenfeld, that you were
18 actually pursuing that deal as a principal investor,
19 correct?

20 A Correct.

21 Q And I think that you testified that you were
22 considering flipping it over to Retrophin for their
23 investment; is that right?

24 A That is right.

25 Q And you discussed that with Ron Tilles?

Rosenfeld - Cross - Pitluck

9910

1 A I did, but I never mentioned the name of the drug. I
2 just told him it was a phase three opportunity.

3 Q You never mentioned the name of the drug, but you told
4 him it was phase three opportunity in the pain treatment
5 cream area?

6 A In the cancer area.

7 Q In the cancer area, okay.

8 And, yes or no, Dr. Rosenfeld, you would have
9 pursued this opportunity without your consulting agreement,
10 correct?

11 A Yes, that is correct.

12 Q You testified last week and again today that the only
13 person that you spoke to directly at Retrophin about your
14 consulting services was Mr. Tilles, correct, sir?

15 MR. MASTRO: Objection. Asked and answered, Your
16 Honor.

17 THE COURT: Sustained.

18 MR. PITLUCK: Okay.

19 Q Isn't it true, Dr. Rosenfeld, that between February,
20 2014 when you signed your consulting agreement and October
21 of 2014, you only sent one e-mail to Ron Tilles; is that
22 right?

23 A Can you repeat that?

24 Q Sure. Between February of 2014 when you signed your
25 consulting agreement and October of 2014, you only sent one

Rosenfeld - Cross - Pitluck

9911

1 e-mail to Mr. Tilles, correct?

2 A I'm not sure of that.

3 Q See if I can refresh your recollection. Do you
4 remember being asked the same question in the arbitration
5 proceeding?

6 A It is possible.

7 Q So if you could flip in your -- in your binder with the
8 arbitration transcript to Page 1016, Lines 16 -- oh, I'm
9 sorry 1017, Lines 4 through Line 11.

10 Do you see that, sir?

11 A I do not.

12 Q Does that refresh your recollection that you only sent
13 one e-mail to Mr. Tilles between February of 2014 and
14 October of 2014?

15 A I'm sorry. I do not see it.

16 Q Page 1017, Line 4. Maybe it is easier if you go up to
17 Page 1016, Line 16, you see the question that led to it.

18 A Yes.

19 Q So that refreshes your recollection, sir?

20 A Yes.

21 Q And isn't it true, Dr. Rosenfeld, that the single
22 e-mail you sent to Ron Tilles had to do with something
23 called E Live Choice; is that right, sir?

24 A Yes.

25 Q And E Live Choice is a company who manufactures

Rosenfeld - Cross - Pitluck

9912

1 electronic cigarettes, correct, sir?

2 A I believe they distribute them.

3 Q And it is your testimony that you thought E Live Choice
4 would be a good opportunity for Retrophin, correct?

5 A I sent this to Ron Tilles to see if he would -- he was
6 interested or had any ideas.

7 Q To Ron Tilles, your friend, or Ron Tilles the Retrophin
8 employee?

9 A Both.

10 Q So it is your testimony that you thought at the time
11 Retrophin the orphan drug company may be interested in
12 E Live Choice, the electronic cigarette company?

13 MR. MASTRO: Objection. Asked and answered.

14 THE COURT: Overruled.

15 A Yes. Because it was very clear to me that Retrophin
16 was looking for income producing deals, distribution deals,
17 phase three deals. And at the time I sent him this e-mail,
18 that was the beginning of that industry. I flew to China,
19 went to the factories and came back with a delivery system
20 that was unique. And we were one of the first looking at
21 it, not to E Live, but just looking at it on our own to put
22 other potential pharmaceuticals in a delivery system.

23 Q Okay.

24 A So that was my only interest.

25 Q Okay. Now I want to go back to your testimony in the

Rosenfeld - Cross - Pitluck

9913

1 arbitration proceeding in September of 2016. Now yes or no,
2 Dr. Rosenfeld, but prior to your testimony in the
3 arbitration proceeding, you were in contact with counsel for
4 Mr. Greebel?

5 MR. MASTRO: Asked and answered, Your Honor.

6 THE COURT: Overruled.

7 MR. PITLUCK: I do not think so, Judge.

8 THE COURT: Overruled.

9 A I do not recall having any contact with Mr. Greebel.

10 Q Do you have any recollection of authorizing your
11 lawyers to give information to Mr. Greebel and his team?

12 A I do not know if I can answer that.

13 MR. MASTRO: Your Honor --

14 MR. PITLUCK: Your Honor, I'm happy to provide the
15 non-privileged basis, if you would like.

16 THE COURT: All right. Why don't we discuss this
17 briefly at sidebar. Excuse us, members of the jury.

18 (The following occurred at sidebar.)

19 (Continued on the next page.)

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25

SIDEBAR CONFERENCE

9914

1 (WHEREUPON, the following proceedings were had at
2 sidebar, out of the hearing of the open courtroom, to wit:)

3 THE COURT: The question was asked initially as to
4 whether or not he contacted or had any contact with
5 Mr. Greebel's lawyers. The response was, he doesn't recall
6 contacting Mr. Greebel.

7 MR. PITLUCK: Okay.

8 THE COURT: So, and then next question was whether
9 his lawyers contacted Mr. Greebel's lawyers, or is it back to
10 whether he had any contact with Mr. Greebel's lawyers?

11 MR. PITLUCK: Your Honor, I will clear up the
12 primary question, but the next question I would ask is whether
13 he authorized his lawyers to communicate with Mr. Greebel's
14 lawyers, and he was asked about this in the arbitration
15 proceeding, and he provided answers.

16 MR. BRODSKY: Your Honor, there are a couple of
17 problems with it. An arbitration proceeding is completely
18 different than this court proceeding in the rules of evidence.
19 In a number of respects, this is improper.

20 First, they are trying to elicit his communications
21 with counsel, which are completely privileged and they're
22 confidential. They have objected on similar grounds when such
23 questions were asked during communications with respect to
24 certain witnesses that they called and their lawyers.

25 Second, Your Honor, what's the relevance? There's

SIDEBAR CONFERENCE

9915

1 no relevance whatsoever to any communications between
2 Dr. Rosenfeld's counsel and Mr. Greebel's counsel, in any way,
3 except to try to insinuate that there's something improper
4 about it or that there's something, you know, wrong about it.
5 Whether or not Dr. Rosenfeld's counsel communicated with us
6 has no relevance or bearing on any fact of consequence to this
7 trial.

8 THE COURT: I think both sides have elicited from
9 various witnesses, A, whether they have been in contact with
10 that lawyer or the lawyer's firm before, and, B, whether that
11 witness has been in contact with opposing counsel. That has
12 been done repeatedly throughout this trial.

13 MR. BRODSKY: Understood.

14 THE COURT: And Mr. Pitluck is looking to elicit
15 testimony, whether this witness had any contact with
16 Mr. Greebel's counsel before September 2016.

17 MR. BRODSKY: We have no objection to any questions
18 to Dr. Rosenfeld about his communications with us. Absolutely
19 none. But what they're asking now is not that. They're
20 asking whether or not Dr. Rosenfeld's counsel, Dr. Rosenfeld's
21 counsel, communicated with Mr. Greebel's counsel. What that
22 requires, Your Honor, is reviewing a communication between
23 Dr. Rosenfeld and his lawyer, which is presumptively
24 privileged and confidential, and, also, then Dr. Rosenfeld's
25 counsel's communications with him, which are presumptively

SIDEBAR CONFERENCE

9916

1 privileged and confidential, and there is no relevance, and we
2 never did ask or inquire as to whether or not, for example,
3 Mr. Blanton's lawyer communicated with the US Attorney's
4 office. If we had started asking questions of witnesses like
5 Mr. Aselage, Mr. Blanton, Mr. Richardson, whether they knew
6 their lawyers were communicating with the US Attorney's office
7 and what their lawyers told the US Attorney's office, we --
8 that, first, would be improper, because we would be eliciting
9 privileged communications, and, second -- between the witness
10 and their lawyers, and, second, Your Honor, what would be the
11 relevance? There would be no relevance to us trying to elicit
12 from Mr. Blanton what his lawyers were telling the US
13 Attorney's office.

14 THE COURT: Let's stay on the topic of this
15 witness --

16 MR. BRODSKY: Yes, Your Honor.

17 THE COURT: -- and this witness and their attorney.
18 Let's not start going through the whole trial. Let's focus on
19 this witness. Let's just get through it.

20 MR. PITLUCK: So I can finish by 1:00 p.m., and so
21 Dr. Rosenfeld doesn't have to come back.

22 In his arbitration proceeding in front of numerous
23 law firms, including counsel for Retrophin, he was asked and
24 permitted to answer whether he authorized his attorneys to
25 speak to counsel for Mr. Greebel. That is a clear privilege

SIDEBAR CONFERENCE

9917

1 waiver, and it goes to his bias. That's the relevance. So I
2 don't want to go into this, but I agree, going into privileged
3 communication is inappropriate. This is something he was
4 asked and answered in an arbitration proceeding with counsel
5 for the other side present. That's it.

6 THE COURT: And his counsel was present?

7 MR. PITLUCK: Absolutely.

8 MR. BRODSKY: Your Honor, my objection to this is
9 he's already testified he met with us. So that is -- if they
10 want to argue bias --

11 THE COURT: This question is whether he met before
12 the arbitration, okay.

13 MR. BRODSKY: I don't mind if Dr. Rosenfeld, if they
14 ask if he met with us. That's perfectly fine and goes to
15 bias. What they are trying to get out, Your Honor, is that
16 somehow Dr. Rosenfeld's counsel, his meeting with us, and
17 insinuate that that's improper or relevant, and my objection
18 to that, Your Honor, is that there's zero relevance to the
19 fact that Dr. Rosenfeld's counsel talked to us, it doesn't say
20 anything about what was said, and what was said, if they try
21 to elicit that, is certainly privileged.

22 MR. PITLUCK: I'm not going to ask what was said. I
23 was going to ask if he authorized him to communicate.

24 MR. BRODSKY: What's the relevance?

25 MR. PITLUCK: How is that not relevant?

SIDEBAR CONFERENCE

9918

1 THE COURT: The proffer he made is to relevance. It
2 goes to his bias. That's what cross-examination is, you know.

3 MR. BRODSKY: I agree.

4 THE COURT: One of the purposes is to show whether a
5 witness is in alignment with one side or the other. So I
6 think it is fair ground, for cross. The arbitration was
7 inquired into. He's not asking this out of the blue, he has a
8 good faith basis for asking it, and I think that, you know, if
9 he's presenting the doctor with his arbitration testimony,
10 then it is appropriate for him to do that, and confronting him
11 and crossing him.

12 MR. BRODSKY: Your Honor, if they do this, then I
13 think it opens up the door for us to ask Dr. Rosenfeld about
14 the communications that Retrophin had, he knows Retrophin had
15 with the US Attorney's office in connection with the
16 arbitration.

17 THE COURT: He doesn't know what Retrophin did
18 with --

19 MR. BRODSKY: We believe he does.

20 THE COURT: -- the US Attorney's office.

21 MR. BRODSKY: We believe he does.

22 THE COURT: The question is whether he is aware of
23 his own counsel's communications with counsel for Mr. Greebel.
24 It is a far cry for him to ask whether or not he's aware of
25 any other communications that don't involve his lawyer, and

SIDEBAR CONFERENCE

9919

1 any other party, which is what you are asking. I would
2 overrule --

3 MR. BRODSKY: If he has personal knowledge of it.

4 THE COURT: I would not allow that line of testimony
5 to ask Dr. Rosenfeld whether he's aware of communications
6 between people other than his own lawyer and other parties to
7 the arbitration.

8 MR. BRODSKY: And if we wanted to elicit them,
9 Your Honor, he knew his lawyers communications with the US
10 Attorney's office, then that would be proper as well. So, in
11 other words, they are eliciting communications --

12 THE COURT: If his attorneys spoke with the US
13 Attorney's office?

14 MR. PITLUCK: Judge, I am simply asking if he
15 authorized his attorneys to speak to Mr. Greebel's lawyers. I
16 think a fair properly limited scope of that, which, by the
17 way, he didn't waive on, but I think it is fair if he says,
18 did you authorize your attorneys to speak to the US Attorney's
19 office, I think that's a fair directive, obviously.

20 THE COURT: It is for a limited. Don't -- you are
21 not going to go --

22 MR. PITLUCK: I am not going into related to
23 conversations, Judge.

24 THE COURT: All right. Thank you.

25 (Sidebar conference ends.)

SIDEBAR CONFERENCE

9920

(Continued on the next page.)

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ROSENFELD - CROSS - PITLUCK

9921

1 (Open court.)

2 BY MR. PITLUCK:

3 Q So just taking a step back, Dr. Rosenfeld, I believe you
4 testified that you, prior to your arbitration proceeding,
5 never spoke to counsel for -- or you never spoke to
6 Mr. Greebel, correct?

7 A Could you repeat that?

8 Q Sure.

9 I believe you testified, just before our break, that
10 you, personally, never spoke to Mr. Greebel before your
11 arbitration proceeding, correct?

12 A That's correct.

13 Q What about for counsel to Mr. Greebel, did you speak to
14 any counsel for Mr. Greebel before your arbitration
15 proceeding?

16 A I don't believe so.

17 Q But you did authorize your attorneys to speak to
18 Mr. Greebel's attorneys before your arbitration proceeding,
19 correct?

20 A Yes.

21 Q And isn't it true, Dr. Rosenfeld, that Mr. Greebel's
22 attorneys paid for the court reporter in your arbitration
23 proceeding?

24 A Correct.

25 Q And isn't it true, Dr. Rosenfeld, that some of the money

ROSENFELD - CROSS - PITLUCK

9922

1 that you raised to pay for your lawyers during the arbitration
2 proceeding came from Mr. Tilles, right?

3 A I did sell shares to him so I don't know whom -- I did
4 sell some art to him, but that's the only -- you know, he got
5 something in return. And I undersold everything. So that's
6 how I can answer that question. I hope I did, by the way.

7 Q And you testified earlier today that you produced
8 documents to Retrophin as part of your arbitration, correct?

9 Remember, we had a discussion about the Rosenfeld
10 Bates stamp; do you remember that?

11 A Yes.

12 Q Isn't it true, Dr. Rosenfeld, that you know that some of
13 those documents came from counsel to Mr. Greebel?

14 A I don't know that.

15 Q You don't have personal knowledge of that?

16 MR. MASTRO: Asked and answered, Your Honor.

17 THE COURT: Overruled.

18 BY MR. PITLUCK:

19 Q Maybe I can refresh your recollection. I would like to
20 show you what's been marked as Government Exhibit 117-133. It
21 is a long document, Dr. Rosenfeld. I am just going to ask you
22 to focus on the first page.

23 Dr. Rosenfeld, I certainly don't want you to go
24 through the entire document, but focusing on the front page,
25 you see in the bottom right that there's a Bates stamp

ROSENFELD - CROSS - PITLUCK

9923

1 Rosenfeld 005964?

2 A I do.

3 Q And it is an e-mail. I am not going to go through
4 everybody on it, from Marc Panoff for a recipient -- to a
5 group of recipients, attaching, with a subject, board agenda.
6 Do you see that, sir?

7 A I do.

8 Q You are not copied on this document in any way, are you,
9 sir?

10 A That's correct.

11 Q And you, sitting here today, don't know how this document
12 came into your possession you produced as part of the
13 arbitration proceeding?

14 A I'm not sure, but that's correct.

15 Q I'm sorry, Dr. Rosenfeld. I just want to make sure I
16 understand. You said, "I am not sure that's correct," or "I'm
17 not sure, that's correct." That's going really play well in
18 the transcript.

19 I'm sorry, could you just rephrase your answer,
20 Dr. Rosenfeld?

21 A I believe there was some communication between the
22 attorneys, but I'm not copied on it, so that's my answer.

23 MR. PITLUCK: Okay. Your Honor, can I have one
24 quick moment?

25 THE COURT: Yes.

ROSENFELD - REDIRECT - MASTRO

9924

1 (Short pause.)

2 MR. PITLUCK: Nothing further, Judge.

3 THE COURT: All right. Mr. Mastro, please. Would
4 you like to redirect?

5 MR. MASTRO: Yes. Thank you, Your Honor.

6 BY MR. MASTRO:

7 Q Sir, let me be clear. The document that's in front of
8 you, Dr. Rosenfeld --

9 THE COURT: Government Exhibit 117-133, Mr. Mastro?

10 MR. MASTRO: Yes.

11 BY MR. MASTRO;

12 Q That same document comes out of Retrophin's files, right?

13 A Yes.

14 Q And didn't Retrophin have obligations to produce
15 documents --

16 THE COURT: Sir, we're not leading.

17 MR. PITLUCK: Objection.

18 MR. MASTRO: Sorry. Just trying to speed this
19 along, Your Honor.

20 THE COURT: Well, we are not going to lead, to do
21 that.

22 BY MR. MASTRO:

23 Q What, Dr. Rosenfeld, were Retrophin's obligations to
24 produce documents to you during the arbitration?

25 A I left it to my lawyers.

ROSENFELD - REDIRECT - MASTRO

9925

1 Q Okay. Sir, didn't Retrophin also pay for a transcript
2 from the court reporter in the arbitration?

3 A I'm not sure.

4 Q Are you aware, sir, whether or not Mr. Greebel wanted a
5 transcript?

6 MR. PITLUCK: Objection to the leading, Your Honor.

7 THE COURT: Sustained. Rephrase.

8 BY MR. MASTRO:

9 Q Sir, you were asked whether you authorized your lawyers
10 to speak with Mr. Greebel's counsel. Did you also authorize
11 your lawyers to speak to the government?

12 A During what period of time?

13 Q In the period 2015, mid 2015, when you were first
14 contacted in July of 2015 by FBI agents and since, have you
15 ever authorized your lawyers to speak to the government?

16 A Are you saying have my lawyers --

17 MR. PITLUCK: Your Honor, objection.

18 THE COURT: The question -- do you want it reread,
19 sir.

20 THE WITNESS: Please. Please.

21 THE COURT: All right. Could the court reporter --

22 MR. MASTRO: I will rephrase it, Your Honor.

23 BY MR. MASTRO:

24 Q Since the first time you were contacted by the FBI in
25 July 2015, have you ever authorized your lawyers to speak to

ROSENFELD - REDIRECT - MASTRO

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1 anyone from the government; yes or no?

2 A Yes.

3 Q And, sir, I want to -- I hope you still have it in front
4 of you, it is Government Exhibit marked 117-110. That's a
5 series of text messages between you and Ron Tilles. Do you
6 see that, sir?

7 A I do.

8 Q You were asked questions on cross-examination about how
9 many e-mails you sent to Mr. Tilles between mid February 2014
10 and late 2014. Do you recall those questions, sir?

11 A I do.

12 Q How else, if any other way, did you communicate with
13 Mr. Tilles between mid February 2014 and late 2014?

14 A Telephone, text, meetings.

15 Q How many times did you meet with Mr. Tilles between mid
16 February 2014 and the end of 2014?

17 A Numerous times. Meaning that -- could have been over 50
18 times to a hundred times.

19 Q And even more texts and e-mails --

20 MR. PITLUCK: Objection, Your Honor.

21 BY MR. MASTRO:

22 Q -- during that --

23 THE COURT: Sustained.

24 MR. MASTRO: Strike that. Strike that. Strike
25 that.

ROSENFELD - REDIRECT - MASTRO

9927

1 BY MR. MASTRO:

2 Q Sir, let me -- do you have Government Exhibit, marked for
3 identification, 117-110, in front of you?

4 A I do.

5 Q And this is a series of text messages between yourself
6 and Mr. Tilles, from October 15 through October 20 of 2014?

7 A Yes.

8 MR. MASTRO: Your Honor, I ask that the exhibit be
9 received in evidence.

10 MR. PITLUCK: Your Honor, this is clearly hearsay.
11 That's why we didn't admit it.

12 BY MR. MASTRO:

13 Q Am I correct, sir, that in October -- strike that.

14 When you had this exchange of texts with Mr. Tilles
15 after you received the mid October e-mail from Mr. Aselage,
16 did you make clear to Mr. Tilles that you intended to send
17 Mr. Aselage --

18 MR. PITLUCK: Objection, Your Honor.

19 BY MR. MASTRO:

20 Q -- information regarding consulting after receiving --

21 THE COURT: Sustained. Sustained. Rephrase the
22 question so you are not leading the witness, please.

23 BY MR. MASTRO:

24 Q Dr. Rosenfeld, am I correct that after --

25 MR. PITLUCK: Objection to the leading.

ROSENFELD - REDIRECT - MASTRO

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1 MR. MASTRO: Strike that. Strike that.

2 BY MR. MASTRO:

3 Q How did you respond to Mr. Tilles when he asked you what
4 happened with Mr. Aselage?

5 A Responded that Mr. Aselage was giving me a difficult
6 time, and I had to speak to counsel.

7 Q Sir, referring you to the texts you exchanged with
8 Mr. Tilles at that time, the text where he asked you, so
9 what --

10 MR. PITLUCK: Objection, Your Honor. It is not in
11 evidence.

12 THE COURT: Try to rephrase your question,
13 Mr. Mastro, please.

14 MR. MASTRO: Certainly.

15 BY MR. MASTRO:

16 Q What steps, if any, did you intend to take in responding
17 to Mr. Aselage after review by counsel?

18 A To go to arbitration.

19 Q Did you in early 2015 advise Mr. Aselage that you were
20 going to arbitration?

21 MR. PITLUCK: Objection.

22 THE COURT: Sustained. Please rephrase your
23 question.

24 BY MR. MASTRO:

25 Q What communication did you have with Mr. Aselage in early

ROSENFELD - REDIRECT - MASTRO

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1 2015 about arbitration?

2 A We were exchanging e-mails and texts, I guess.

3 Q Sir, did there come a time in early 2015 when you sent
4 him a handwritten note?

5 A Yes.

6 Q Can I refer you to tab 15 of the binder, what's been
7 marked as DX-12329. Can you identify what this document is,
8 sir?

9 A I was sending Mr. Aselage a small note based upon the
10 potential or filling out an application for arbitration, and
11 telling him that I was sorry --

12 MR. PITLUCK: Objection.

13 THE WITNESS: -- that it had to come down to this.

14 THE COURT: Sustained.

15 MR. MASTRO: Your Honor, I ask that DX-12329 be
16 received in evidence.

17 MR. PITLUCK: Your Honor, it is a hearsay document.

18 THE COURT: I am not quite sure what basis -- what
19 your basis is for offering. In one word, if you can tell me,
20 please, the admissibility of this document.

21 MR. MASTRO: Not truth, notice, Your Honor.

22 THE COURT: I beg your pardon?

23 MR. MASTRO: Not truth, notice.

24 MR. PITLUCK: To who?

25 THE COURT: Both the note and the --

ROSENFELD - REDIRECT - MASTRO

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1 MR. MASTRO: Yes, Your Honor.

2 THE COURT: -- form?

3 MR. MASTRO: Yes, Your Honor.

4 THE COURT: I will allow it. Defense Exhibit 12329
5 is admitted.

6 MR. MASTRO: Thank you, Your Honor.

7 (Defense Exhibit 12329 received in evidence.)

8 BY MR. MASTRO:

9 Q Publishing it to the jury, is that your handwriting,
10 Dr. Rosenfeld?

11 A Yes.

12 Q Dated April 29, 2015?

13 A Yes.

14 Q "Stephen" there, who's that referring to?

15 A Mr. Aselage.

16 Q And what did you write to him there?

17 A "Stephen, sorry it had to come down to this."

18 Q And, sir, attached to this note, going to the second
19 page, what is that, sir?

20 A It is a demand for arbitration before JAMS.

21 Q Who filled out that form, sir?

22 A I did.

23 Q Am I correct, sir, that -- strike that.

24 MR. PITLUCK: Objection, Your Honor.

25 MR. MASTRO: Strike that. Strike that.

ROSENFELD - REDIRECT - MASTRO

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1 BY MR. MASTRO:

2 Q From late 2014 into early 2015, what was your
3 understanding, if anything, about Ron Tilles communicating to
4 Mr. Aselage the consulting work you had been doing for
5 Retrophin?

6 MR. PITLUCK: Objection to hearsay, Your Honor.

7 THE COURT: I am just trying to -- Dr. Rosenfeld,
8 you can't testify about anything that anyone said to you. But
9 if you have an understanding that is derived from something
10 other than what you might have learned from somebody telling
11 you something, you can answer the question. If you can.

12 THE WITNESS: I'm sorry, please repeat the question.
13 I just want to be very accurate.

14 MR. MASTRO: Sure. If you can read it back, please.

15 (WHEREUPON, the record was read by the reporter as
16 requested.)

17 THE WITNESS: I thought he was reporting back to
18 Mr. Shkreli or to his people at Retrophin.

19 BY MR. MASTRO:

20 Q Sir, directing your attention to what's been marked as
21 DX-6745. Can you bring that up, please?

22 MR. PITLUCK: What tab?

23 MR. MASTRO: DX-6745, tab number 8.

24 Can you please bring up the first page, Mr. Carter.
25 Bring up the -- just the two addresses.

ROSENFELD - REDIRECT - MASTRO

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1 THE COURT: Is this not in evidence?

2 MR. MASTRO: It is.

3 MR. PITLUCK: It is.

4 MR. MASTRO: It is in evidence, Your Honor.

5 THE COURT: Okay.

6 BY MR. MASTRO:

7 Q April 23, 2013, do you see that, Dr. Rosenfeld?

8 A I do.

9 Q And its subject is consulting agreement, right?

10 A Right.

11 Q The bottom e-mail is Mr. Greebel to Ron Tilles, right?

12 A Yes.

13 Q And then the top e-mail, forwarding the document to you,
14 is from Ron Tilles to you, correct?

15 A Correct.

16 Q Now, you were shown during your cross-examination,
17 Government Exhibit 117-50, a revised draft of a consulting
18 agreement. Do you remember being asked questions about that,
19 sir?

20 A I do.

21 Q Can I use the ELM0, please. Here we go.

22 Again, bottom e-mail. Who's the bottom e-mail,
23 May 24, 2013, from?

24 A Mr. Greebel.

25 Q To?

ROSENFELD - REDIRECT - MASTRO

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1 A Ron Tilles.

2 Q And the top e-mail forwarding it on to you, is from whom?

3 A Ron Tilles.

4 Q Were you having any direct communication with Mr. Greebel
5 during this period, or through Ron Tilles?

6 MR. PITLUCK: Objection to the leading, Your Honor.

7 MR. MASTRO: Strike that, Your Honor.

8 THE COURT: All right. Rephrase.

9 BY MR. MASTRO:

10 Q What -- how was it that you were receiving these draft
11 consulting agreements? Through whom?

12 A Through Ron Tilles.

13 MR. MASTRO: No further questions, Your Honor.

14 Thank you.

15 THE COURT: Did you want to -- are you still
16 pursuing, or did you withdraw your request to admit Government
17 Exhibit 117-10? You just jumped to the next question.

18 MR. MASTRO: I would like it received, Your Honor,
19 but I didn't want to have a sidebar.

20 MR. PITLUCK: Judge, 117-10?

21 THE COURT: I'm sorry, 117-110.

22 MR. MASTRO: 117-110.

23 THE COURT: Yes.

24 MR. PITLUCK: Yes, Judge.

25 THE COURT: I cite Rule 612 as a basis to admit it,

ROSENFELD - REDIRECT - MASTRO

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1 if the parties had provisions of this that it believed should
2 be admitted.

3 MR. MASTRO: I would appreciate it being admitted,
4 Your Honor. I move its admission.

5 MR. PITLUCK: That's fine, Judge.

6 THE COURT: All right.

7 MR. PITLUCK: That's fine.

8 THE COURT: It is all right to admit it?

9 MR. PITLUCK: Just this one, Judge.

10 THE COURT: All right.

11 MR. MASTRO: Thank you. If I can just --
12 Your Honor --

13 THE COURT: I am speaking, sorry.

14 MR. MASTRO: Sorry, Your Honor.

15 THE COURT: All right. So we will admit Government
16 Exhibit 117-110.

17 (Government Exhibit 117-110 received in evidence.)

18 MR. MASTRO: If Your Honor --

19 MR. PITLUCK: Judge, I would --

20 MR. MASTRO: Since it has been admitted, if I can
21 just ask one question about it.

22 MR. PITLUCK: I would ask for the instruction and to
23 have a copy shown to the jury that's not been marked up.

24 MR. MASTRO: Sorry. Can I borrow a copy from you?

25 THE COURT: Members of the jury, Government Exhibit

ROSENFELD - REDIRECT - MASTRO

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1 117-110 is not being offered for the truth, but rather to --
2 well, it is not being offered for the truth. Let's leave it
3 at that.

4 I have my copy. Do you need a clean copy?

5 MR. MASTRO: That would be fantastic, Your Honor, if
6 I could. I will be very, very brief. I promise.

7 THE COURT: Just return it, please.

8 MR. MASTRO: Certainly, Your Honor.

9 BY MR. MASTRO:

10 Q Dr. Rosenfeld, you see there towards the top, a text you
11 received from Ron Tilles on October 15, 2014, at 7:52 p.m.?
12 Second one from the top?

13 A Yes.

14 Q Is that from Mr. Tilles to you, saying, quote, so what
15 happened with Aselage?

16 A Yes.

17 Q And can you please read to the jury your response on
18 October 15, 2014, at 10:00 p.m., starting with Ron? What do
19 you say to Ron?

20 A Ron, will send you an e-mail regarding consulting on
21 finding potential companies after review by counsel. We're
22 leaving earlier, can you meet to discuss.

23 Q And by "him," you are referring to Mr. Aselage, correct?

24 MR. PITLUCK: Objection to the leading, Your Honor.

25 THE COURT: Sustained. Don't lead the witness.

ROSENFELD - REDIRECT - MASTRO

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1 MR. MASTRO: Strike that.

2 BY MR. MASTRO:

3 Q Who were you referring to when you referred to him in
4 that e-mail -- text, I mean?

5 A Mr. Aselage.

6 MR. MASTRO: No further questions, Your Honor.

7 THE COURT: All right. Any recross, Mr. Pitluck?

8 MR. PITLUCK: No, Your Honor. Thank you.

9 THE COURT: Sir, you are excused. Thank you for
10 your time.

11 MR. MASTRO: Thank you, Dr. Rosenfeld.

12 THE COURT: Have a nice day.

13 THE WITNESS: Thank you, Your Honor.

14 (WHEREUPON, the witness was excused.)

15 THE COURT: Mr. Mastro, may I have that exhibit
16 back.

17 MR. MASTRO: Sorry, Your Honor. Absolutely.

18 THE COURT: Thank you.

19 All right. Was the defense ready to call its next
20 witness?

21 MS. DENERSTEIN: Yes, Your Honor. We are prepared
22 to call Mr. Dooley back to the stand.

23 THE COURT: All right. So perhaps we can get
24 started.

25 As I indicated to the jury, we would adjourn today

DOOLEY - DIRECT - DENERSTEIN

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1 at 1:00. So let's see how far we can get. Thank you.

2 MS. DENERSTEIN: Mr. Dooley, do you have any of your
3 binders up there?

4 THE COURT: These are mine.

5 MS. DENERSTEIN: They are coming in.

6 THE COURT: I am happy to share.

7 MS. DENERSTEIN: No, we're good.

8 J O S E P H D O O L E Y,

9 called as a witness, having been previously duly
10 sworn, continued examined and testified as follows:

11 DIRECT EXAMINATION (CONTINUED)

12 BY MS. DENERSTEIN:

13 Q Good afternoon, Mr. Dooley.

14 A Good afternoon.

15 MS. DENERSTEIN: Your Honor, I would like to start
16 by reading into the record the various exhibits that were
17 discussed on December 16 and -- I'm sorry, December 14 and
18 December 15. So may I --

19 THE COURT: As stipulated for admission, you mean?

20 MS. DENERSTEIN: Per our discussion with the Court
21 and the Court's rulings.

22 So, at this time, the defense offers Defense Exhibit
23 8207 in evidence, Defense Exhibit 104-97A, Defense Exhibit
24 1055, Defense Exhibit 1069, Defense Exhibit 1070, Defense
25 Exhibit 1071, Defense Exhibit 1072, Defense Exhibit 1106,

DOOLEY - DIRECT - DENERSTEIN

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1 Defense Exhibit 1151-A, Defense Exhibit 1154, Defense Exhibit
2 1157, Defense Exhibit 1167, Defense Exhibit 1189, Defense
3 Exhibit 1228, Defense Exhibit 1242, Defense Exhibit 1243,
4 Defense Exhibit 1255, Defense Exhibit 1260, Defense Exhibit
5 1274, Defense Exhibit 1285, Defense Exhibit 1289, Defense
6 Exhibit 1292, Defense Exhibit 1294, Defense Exhibit 1295,
7 Defense Exhibit 1296, Defense Exhibit 1298, Defense Exhibit
8 1299, Defense Exhibit 1309, Defense Exhibit 1314, Defense
9 Exhibit 1327, Defense Exhibit 1328, Defense Exhibit 1345,
10 Defense Exhibit 1348, Defense Exhibit 1901, Defense Exhibit
11 1902, Defense Exhibit 1903, Defense Exhibit 2949, Defense
12 Exhibit 5181, Defense Exhibit 6239, Defense Exhibit 8342,
13 Defense Exhibit 8901, Defense Exhibit 9151, Defense Exhibit
14 9168, Defense Exhibit 9198, Defense Exhibit 11573, Defense
15 Exhibit 11663, Defense Exhibit 13056, Defense Exhibit 13075,
16 in evidence.

17 (Continued on the next page.)
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Proceedings

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1 MR. KESSLER: Your Honor we have no objection
2 subject to prior conversations and some of those documents
3 speak -- it's not for the truth and some have redactions.

4 THE COURT: All right. It does appear that the
5 majority of these documents are going to be admitted not for
6 the truth, and some of these documents are also going to
7 have redactions; however, the jury should not speculate
8 about the redactions, the reasons for them, or what lies
9 underneath the redaction.

10 MS. DENERSTEIN: And, Your Honor, for purposes of
11 the record as well, we had discussed
12 Defendant's Exhibit 10830-A and Defendant's Exhibit 10868-A,
13 but those had already been admitted previously, and I just
14 got back with Mr. Kessler.

15 (Defense Exhibit 8207, Defense Exhibit 104-97A,
16 Defense Exhibit 1055, Defense Exhibit 1069, Defense Exhibit
17 1070, Defense Exhibit 1071, Defense Exhibit 1072, Defense
18 Exhibit 1106, Defense Exhibit 1151-A, Defense Exhibit 1154,
19 Defense Exhibit 1157, Defense Exhibit 1167, Defense Exhibit
20 1189, Defense Exhibit 1228, Defense Exhibit 1242, Defense
21 Exhibit 1243, Defense Exhibit 1255, Defense Exhibit 1260,
22 Defense Exhibit 1274, Defense Exhibit 1285, Defense Exhibit
23 1289, Defense Exhibit 1292, Defense Exhibit 1294, Defense
24 Exhibit 1295, Defense Exhibit 1296, Defense Exhibit 1298,
25 Defense Exhibit 1299, Defense Exhibit 1309, Defense Exhibit

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1 1314, Defense Exhibit 1327, Defense Exhibit 1328, Defense
2 Exhibit 1345, Defense Exhibit 1348, Defense Exhibit 1901,
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5 Exhibit 8342, Defense Exhibit 8901, Defense Exhibit 9151,
6 Defense Exhibit 9168, Defense Exhibit 9198, Defense Exhibit
7 11573, Defense Exhibit 11663, Defense Exhibit 13056, Defense
8 Exhibit 13075 so marked and received in evidence.)

9 BY MS. DENERSTEIN:

10 Q Okay. Let's turn back to -- Mr. Dooley, do you have
11 Binder 2 in front of you?

12 A I do.

13 Q And let's turn back to the board minutes in 2013, which
14 is Defendant's Exhibit 118-26A.

15 A Yes.

16 Q Okay. I am at this point going to show you a chart
17 that has been marked for identification as Defendant's
18 Exhibit 8A.

19 Mr. Dooley, have you had an opportunity to look at
20 this?

21 A I have.

22 Q And it is not in evidence yet, but can you describe
23 briefly what it is?

24 A It's a chart which summarizes certain documents related
25 to the certain board meetings on various dates over a

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1 several-month period, including the exhibit number of the
2 document, the date of the document, the subject matter or
3 the subject line in the e-mail, from/to if it exists, and
4 CC.

5 MS. DENERSTEIN: Your Honor, at this point, the
6 defendant would like to offer Defense Exhibit 8A as a
7 demonstrative aid pursuant to your Court's prior ruling.

8 MR. KESSLER: And so no objection to it being used
9 as a demonstrative. Objection if it is being used as an
10 exhibit, but I assume it is being offered as an
11 demonstrative.

12 THE COURT: Well, I think that's what she said,
13 correct.

14 MS. DENERSTEIN: That is correct.

15 THE COURT: All right.

16 MS. DENERSTEIN: That is what I said.

17 THE COURT: Defense Exhibit 8-A will be admitted
18 as a demonstrative exhibit.

19 (Defendant's Exhibit Number 8-A so marked and
20 received in evidence for demonstrative purposes only.)

21 BY MS. DENERSTEIN:

22 Q Mr. Dooley, can you please state the title of this
23 chart?

24 A Board Meetings.

25 Q And then looking at the blue row on the chart, can you

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1 please describe each of the categories?

2 A Sure. The first column is an exhibit number, which
3 relates to --

4 Q Can you speak up? I am having a hard time hearing you.
5 Thank you.

6 A The first column is an exhibit number column, which
7 relates to a defense or a government exhibit. The second
8 column is the date, date of the document, date of the
9 e-mail. The subject column is the type document or subject
10 line from the e-mail. The from/to and the CC are fairly
11 self-explanatory. It's s an e-mail chain, who it's from,
12 who it's to, and if anyone is cc'd on that.

13 Q And going down to the first green row?

14 A Uh-huh, yes.

15 Q What date is there?

16 A April 22nd, 2013.

17 Q And what does the date represent?

18 A The date represents the date if the board meeting.

19 Q Okay. Did that date came from Defendant's
20 Exhibit 118-26A?

21 A Yes, it did.

22 Q Now, going down to, for example, Defense Exhibit 13064,
23 the very first row. Could you just go across and explain
24 what that is?

25 A Sure. It's a -- it's a press release with a

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1 description in the subject column, Retrophin Sponsors
2 Seventh International NBIA Disorders Association Family
3 Conference. It's a document that is a press release that is
4 dated April 8, 2013, and it has that defense exhibit number
5 on that document.

6 Q Okay. So let's turn back to Defense Exhibit 118-26A in
7 evidence and go back to the April 22nd, 2013 board meeting.

8 A (Witness complies.)

9 Q And very briefly --

10 MS. DENERSTEIN: Oops. I am just waiting for it
11 to come back on so that the jurors can see.

12 Thank you Mr. Carter.

13 Q Can you remind the jury of who was present in person or
14 by phone?

15 MS. DENERSTEIN: And thank you, Mr. Carter.

16 MR. KESSLER: Objection. He's testifying about
17 who wasn't present?

18 MS. DENERSTEIN: According to this document.

19 THE COURT: Sustained.

20 Q Who does the document say was present in person or by
21 phone?

22 A The following members of the board were present in
23 person or by telephone: Martin Shkreli, Stephen Aselage,
24 Steven Richardson, Evan Greebel of Katten, Muchin, Rosenman,
25 counsel of the company was also present.

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1 Q Now, I'm going to ask you to turn the page to
2 Bates Number 677.

3 MS. DENERSTEIN: And let's go down to the Further
4 Resolved section keep going.

5 Mr. Carter, can you highlight the two Further
6 Resolved sections?

7 Thank you.

8 Q Mr. Dooley, can you read -- I'm sorry.

9 MS. DENERSTEIN: Mr. Carter, just highlight the
10 second Further Resolved section.

11 Thank you.

12 Q Could you read that, Mr. Dooley?

13 A Further resolved that the chief executive officer be,
14 and he hereby is authorized and powered and directed in the
15 name and on behalf of the company to execute and deliver any
16 and all employment and consultant agreements from employees
17 and consultants to the company provided that such employees
18 or consultants are not material to the company and that
19 their agreements would not be required to be disclosed in a
20 current or periodic report filed with the Securities and
21 Exchange Commission.

22 Q Okay.

23 And now let's turn to Government's Exhibit 565 in
24 your binder.

25 THE COURT: May I ask? If this is a good stopping

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1 point for the jury at this point? I do have another matter
2 that is scheduled, and I do have to, as we discussed this
3 morning, deal with another issue. So I would to excuse the
4 jury at this time.

5 Please do not talk about the case. Tomorrow we
6 are going to start, as I said, at 10:30. So in the
7 meantime, please avoid any media exposure and please do not
8 talk about the case and take care of yourselves.

9 Thank you. I will see you tomorrow at 10:30.

10 (Jury exits the courtroom.)

11 (The following matters occurred outside the
12 presence of the jury.)

13 THE COURT: Sir, you can step down.

14 THE WITNESS: Thank you.

15 THE COURT: I'll see you tomorrow.

16 We're starting at 10:30.

17 THE COURTROOM DEPUTY: Thank you.

18 (Witness exits the witness stand.)

19 THE COURT: All right. So I will see you tomorrow
20 morning at 10:30. Thank you.

21 (Matter adjourned to Tuesday, December 19 at
22 10:30 a.m.)

23 -oo0oo-

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